No. 92-854

In The

Supreme Court of the United States

October Term, 1993

CENTRAL BANK OF DENVER, N.A.,

Petitioner,

v.

FIRST INTERSTATE BANK OF DENVER, N.A. AND JACK K. NABER,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

JOINT APPENDIX

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Petition For Writ Of Certiorari Filed On 11/16/92
Writ Of Certiorari Granted On 6/7/93

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 89-F-1250

FIRST INTERSTATE BANK OF DENVER, N.A., and JACK K. NABER,

Plaintiffs

v.

KIRCHNER MOORE & COMPANY, a subsidiary of Drexel Burnham Lambert Incorporated, HANIFEN IMHOFF, INC., THE COLORADO SPRINGS-STETSON HILLS PUBLIC BUILDING AUTHORITY, ROY I. PRING and THE CENTRAL BANK & TRUST COMPANY OF DENVER,

Defendants.

Civil Action No. 89-F-1806

IDS HIGH YIELD TAX-EXEMPT FUND, INC.,

Plaintiff

v.

KIRCHNER MOORE & COMPANY, et al.,

Defendants.

AMENDED COMPLAINT OF PLAINTIFFS
FIRST INTERSTATE BANK OF DENVER, N.A.
AND JACK K. NABER

Plaintiffs submit the following for their Amended Complaint:

NATURE OF THE CASE

1. This is an action by plaintiffs First Interstate Bank of Denver, N.A. and Jack K. Naber relating to the bond issue known as the "Colorado Springs-Stetson Hills Public Building Authority Landowner Assessment Lien Bonds, Series 1988A" (the "1988 Bonds").

2. The issuer of the Bonds, the Colorado Springs-Stetson Hills Public Building Authority (the "Authority"), is a Colorado non-profit corporation, incorporated for the principal purpose of financing the construction and acquisition of public improvements, ultimately to be conveyed to the City of Colorado Springs, within the Stetson Hills area.

3. Stetson Hills is a planned development comprised of residential and commercial property located in the northeastern part of Colorado Springs. The administration and control of the Authority's affairs is handled by the developer of Stetson Hills, the AmWest Development I Limited Partnership (the "Company" or "AmWest").

4. The Company's general partner is AmWest Development Corporation; the limited partners are Roy and Charlotte Pring. Mr. Pring and other members of his family had originally owned all of the property in Stetson Hills, and at the time of the offering of the 1988 Bonds still owned more than half of the land proposed to be included in the development.

5. The proceeds of the 1988 Bonds, which were issued in the aggregate principal amount of $11,000,000,

after deducting issuance expenses and underwriting discount and after setting aside an amount required for a Reserve Fund, were to be used to reimburse the Company for its previous expenditures of approximately $9.4 million for improvements in the development.

6. The 1988 Bonds were special, limited obligations of the Authority, payable from allocated assessment charges to be assessed on approximately 272 acres of property within the development. The assessments were payable by the Company when any of the property was sold. The property was subjected to a lien (the "assessment lien") to secure the Company's ultimate responsibility for the assessment charges and for carrying out its obligations under a Development Agreement with the Authority.

7. According to the Official Statement for the 1988 Bonds, the developer was to be required to maintain sufficient land subject to the assessment lien so that the discounted value of that property would remain equal to at least 160 percent of the assessment charges, i.e. at least 160 percent of the outstanding principal of the 1988 Bonds (the "160% test").

8. The Official Statement included, among other things, a summary appraisal purporting to show the estimated discounted value of the 272 acres pledged to the assessment lien.

9. The Company had the obligation to place additional land under the assessment lien if the value of the security were to fall below the 160% test.

10. Beginning at least in early 1988, and by a course of conduct which was reckless and fraudulent and which will be alleged below in greater detail, defendants caused plaintiffs to invest in the 1988 Bonds, while concealing from plaintiffs facts showing not only that the payment of the 1988 Bonds was subject to additional materially adverse risks not disclosed in the Official Statement, but that the purported "security" for the Bonds, the 272 acres of property subject to the assessment Lien, was in fact inadequate: the defective methodology and assumptions used by the appraiser obtained by the defendants artificially created and maintained a market for the bonds; the appraisal had already been disapproved by at least one other appraiser who had reviewed the work, causing Central Bank as Trustee to request an independent review of the appraisal; this request for independent review was refused by the developer, resulting in a last-minute letter agreement, of May 13, 1988, in which the defendants agreed to go forward with the 1988 Bonds and to postpone appointment of a new appraiser until late 1988.

11. In fact by late 1988, seven months after the 1988 Bonds were issued, these and other risks related to the security and to the appraisal, materialized. The new appraiser selected to evaluate the security for the 1988 Bonds confirmed that far from being secured by property worth 160% of the outstanding bonds, the bonds were substantially under-collateralized. The market for the bonds dried up. The developer, by now in serious financial difficulty, refused to put more property under the Assessment Lien. The defendant underwriters ceased making a market in the Bonds. All of these events have

caused and continue to cause damage to First Interstate Bank and to Mr. Naber.

JURISDICTION AND VENUE

12. Plaintiffs bring this action pursuant to §§ 10(b) and 20 of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b), § 78(t)], and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5]. This Court has jurisdiction of this action pursuant to § 27 of the Exchange Act [15 U.S.C. § 78aa]. Many of the acts charged herein, including the dissemination of the Official Statement for the 1988 Bonds, occurred in this district. In addition, all of defendants maintain offices within this district, and the defendants transacted business in this district.

13. In connection with the acts alleged in this Complaint, the defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including the mails and telephone communications and the facilities of national securities markets.

PARTIES

14. Plaintiff First Interstate Bank of Denver, N.A. ("First Interstate") is a national banking association chartered and in good standing under the laws of the United States, with its principal place of business in Denver, Colorado. On or about June 16, 1988, First Interstate purchased $2,100,000 of the 1988 Bonds. First Interstate now owns $650,000 of these Bonds, the remainder of such

bonds being owned by customers who purchased the Bonds from First Interstate.

15. Plaintiff Jack Naber is an individual, residing in Lakewood, Colorado. On June 16, 1988, Mr. Naber purchased $100,000 of the 1988 Bonds from First Interstate and $25,000 of the Bonds from Drexel Burnham Lambert Incorporated. Mr. Naber continues to hold the Bonds, since there is no market for them.

16. Defendant Kirchner Moore & Company ("Kirchner"), a wholly-owned subsidiary of Drexel Burnham Lambert, Inc., is a Colorado corporation whose headquarters is in Denver.

17. At all relevant times, Kirchner has been engaged in the business of transactions in securities, principally as a dealer and underwriter of tax exempt municipal and U.S. government obligations and other security issues.

18. Kirchner was the lead underwriter for the 1988 Bonds and was also an underwriter of the $15,000,000 of Bonds issued by the Colorado Springs-Stetson Hills Public Building Authority in December of 1986 (the "1986 Bonds").

19. Defendant Hanifen Imhoff, Inc. ("Hanifen"), is a Colorado corporation, with offices in Denver.

20. Hanifen is a registered broker-dealer under the Securities Exchange Act of 1934. Hanifen was an underwriter, with Kirchner, of the 1988 Bonds.

21. Defendant Colorado Springs-Stetson Hills Public Building Authority was incorporated in Colorado as a non-profit corporation on October 22, 1986. As of May 20, 1988, and thereafter, the Authority had no funds or assets

available for payment of debt service on the 1988 Bonds other than its rights to deposit the proceeds from the sale of the Bonds and to cause such proceeds to be used for construction and acquisition of the Stetson Hills improvements.

22. At all relevant times, the day to day administration and management of the Authority's affairs were handled by the Company, pursuant to a Management Agreement between the Company and the Authority.

23. Defendant Roy I. Pring ("Pring") is a citizen of Colorado, residing in El Paso County. At all times material hereto, defendant Pring was a Vice-President and Director of AmWest Development Corporation ("AmWest"), the general partner of the developer AmWest Development I Limited Partnership. The Company was formed in 1985 to develop 2,140 acres of land then owned and ranched by defendant Pring and other members of the Pring family, in the Stetson Hills area northeast of Colorado Springs. As of May 20, 1988, the date of the prospectus for the 1988 Bonds, defendant Pring and his wife owned 35 percent of the Company and directly and indirectly controlled an additional 13 percent through their interest in a Pring family investment entity.

24. At all relevant times, the Company administered and managed the affairs of the Authority, which was the issuer of the 1988 Bonds, pursuant to a Management Agreement. In addition, as of May 20, 1988 defendant Pring was also a principal creditor of the Company, to the extent of more than $5,000,000.

25. As of May 20, 1988, defendant Pring and his family also owned all of the property in Stetson Hills

which had not yet been sold to the Company or to other builders or users, and which was expected to be available as additional security for the 1988 Bonds in the event that the Company was required to subject additional land to the assessment lien in order to satisfy the 160% test.

26. Defendant Pring, by reason of his ownership interest both in the Company and in the general partner of the Company, by reason of his management position in the Company which in turn controlled the day-to-day activities of the Authority as the issuer of the Bonds, and by reason of his membership on the Company's Board of Directors, was a controlling person of the issuer within the meaning of § 20 of the Exchange Act and had the power and influence, and exercised the same, to cause the issuer to engage in the illegal practices complained of herein.

27. Because of his positions, and because of the legal and practical influence of those positions, defendant Pring had access to adverse nonpublic information about the issuer and the Company, and about their business and financial condition and future prospects, as is more particularized below.

28. Defendant The Central Bank & Trust Company of Denver ("Central Bank") is a Colorado corporation with its offices in Denver. Central Bank was the bond trustee for both the 1986 Bonds and the 1988 Bonds.

29. Both Kirchner and Hanifen, in part through their counsel, conducted or participated as part of the 1988 Bond offering, in investigations, known as "due

diligence" investigations, into the business history, operations and prospects of the Company, including investigation of the value of the land owned by the Company and pledged as security for the 1988 Bonds. In the course of such investigations, the defendant underwriters either obtained knowledge of, or recklessly disregarded, the facts set forth in paragraph 42 below.

(a) The defendant underwriters were agents of the issuer, and of the Company, through which the 1988 Bonds were sold to plaintiffs. The defendant underwriters pursued a common course of conduct and aided and abetted the course of conduct and material omissions complained of herein, in part to obtain their share of the fees from the offering proceeds.

(b) A conspiracy, common enterprise and common course of conduct commenced prior to the May 20, 1988 offer of $11,000,000 of the 1988 Bonds and involved the individual defendant, the underwriters, the Company as developer and the Authority. These actors agreed upon and pursued the conspiracy, common enterprise and common course of conduct complained of herein. The purpose and effect of the conspiracy, common enterprise and common course of conduct complained of was, among other things, to obtain money from the investing public in violation of the anti-fraud provisions of the federal securities laws. Defendants accomplished their conspiracy, common enterprise and common course of conduct by selling the 1988 Bonds to the public in the May 1988 public offering, and by thereafter artificially maintaining the price of the Bonds in the after market, all through the

continuing reckless and fraudulent concealment of the facts set forth in paragraph 42 below.

(c) The proceeds of the offering of the 1988 Bonds were divided, directly or indirectly, among the participants in the illegal course of conduct as follows:

(1) By the Authority receiving the proceeds in order to acquire the improvements from the Company;

(2) By the Company receiving, in turn, the proceeds from the sale of the improvements, to fund its previously incurred obligations so that it would be in a position to earn a substantial profit from marketing the Stetson Hills properties;

(3) By Pring receiving on or about June 16, 1988, the closing date, the sum of $1,966,000, since he was not willing to extend further credit to his development project;

(4) By the underwriter defendants obtaining fees for bringing about the offering and for promoting the bonds in the after-market.

30. The underwriter defendants, defendant Pring, and the issuer were each a direct, necessary and substantial participant in the conspiracy, common enterprise and common course of conduct complained of herein. Each of them aided and abetted and rendered substantial assistance in the accomplishment of the fraud complained of herein. Each acted with an awareness of the primary wrongdoing, each realized that its/his conduct was of substantial assistance in the accomplishment of that

fraud, and each was aware of its/his overall contribution to and furtherance of, the conspiracy, common enterprise and common course of conduct.

FACTUAL ALLEGATIONS

31. On November 25, 1986, the Colorado Springs-Stetson Hills Public Building Authority issued its Series 1986A Bonds, totalling $15,000,000. The purpose of this issue, like the purpose of the 1988 Bonds, was to reimburse the Company for expenses which it had incurred in the construction and engineering of public improvements in Stetson Hills.

32. Defendant Kirchner was an underwriter of the 1986 Bonds.

33. The managing underwriter of the 1986 Bonds was Dain Bosworth. Dain Bosworth was not involved in the 1988 Bond offering. While all of the reasons for this are not presently known to plaintiffs, upon information and belief, the principal reason was that by the Fall of 1987 Dain Bosworth had become increasingly alarmed because of information, which was not known to plaintiffs, regarding continuing failures of the developer to meet the Bond covenants in the agreements related to the 1986 issue, and regarding deficiencies in the security and the calculation of the security for the 1986 Bonds.

34. As with the 1988 Bonds, the Official Statement for the 1986 Bonds had represented that the Bonds were to be secured at all times by an assessment lien on property owned by the developer, totalling approximately 250 acres for the 1986 Bonds, the value of which would at all

times equal or exceed 160% of the assessment charges to be applied to payment of the Bonds.

35. In addition, under the Bond covenants the charges levied upon the sale of the 250 acres securing the offering were to be maintained in an amount not less than 110 percent of the principal amount of the bonds outstanding (a cash flow requirement referred to in the Official Statement as the "110% test").

36. The Company's ability to sell the lots in the acreage securing both the 1986 and 1988 offerings, and the continuing sufficiency of the security under the 160% test and of the charges being assessed under the 110% test, were material elements of both the 1986 and 1988 Bond offerings.

37. In connection with the 160% test and the 110% test, the developer was required both for the 1986 Bonds and the 1988 Bonds annually to satisfy the Trustee, Central Bank, that the assessment charges equalled 110 percent of the principal amount of Bonds outstanding, and to submit to the Trustee annually a qualified appraisal report showing that the property remaining subject to the assessment lien had an appraised value, under a distressed sale assumption, equal to 160 percent of the unpaid and outstanding allocated assessment charges.

38. For the 1986 offering, the appraisal prepared on December 8, 1986, reflected that the discounted value of the 250 acres securing the 1986 Bonds was $24,511,000.

39. On or about June 16, 1988, under terms and conditions described in an Official Statement dated May 20, 1988, the Authority offered its second bond issue, the

1988 Bonds, in the amount of $11,000,000. This issue was underwritten by defendant Kirchner and defendant Hanifen. The proceeds from the sale of the 1988 Bonds were to be applied in reimbursement of an additional $9.4 million of expenses which had been incurred by the Company in connection with public improvements in the development of the Stetson Hills area.

40. The 1988 Bonds were to be paid, through a mechanism and procedure identical to that used in the 1986 Bonds, by assessment charges imposed on an additional (i.e. separate from the 1986 security) 272 acres of land owned by the Company in Stetson Hills.

41. Although the property securing the 1988 Bonds was different from the 250 acres securing the 1986 Bonds, since the same entity, the Company, would be obligated in connection with both Bonds, a default under one bond issue, as the Official Statement for the 1988 Bonds stated, "will be likely to produce a default under the other Bond issue."

42. After the issuance of the 1986 Bonds, and before June 16, 1988 when the 1988 Bonds were available for delivery, there occurred a series of material developments, not known or made known to plaintiffs, all affecting the risk of the 1988 bonds. Specifically, these facts and events included, at least, the following:

(a) Although the Official Statement for the 1986 Bonds required that a qualified appraisal report on the security for the 1986 Bonds be supplied annually, by the end of 1987 the Company had failed to satisfy this requirement;

(b) The Company during 1987, had made use of the Reserve Fund for the 1986 Bonds in a manner contrary to the purposes and procedures provided by the bond covenants, essentially treating the Reserve Fund as a source of interest-free financing;

(c) On January 4, 1988, appraiser Joseph Hastings, who had prepared an estimate of the property securing the 1986 Bonds, submitted, belatedly, the required annual reappraisal for the 1986 security, including in it an appraisal of the property securing the 1988 issue. On January 25, 1988, John E. Conrad, Senior Vice President of Dain Bosworth, which was the managing underwriter for the 1986 issue wrote a letter to Central Bank as Trustee of the 1986 issue, copies of which were provided to defendant Kirchner and defendant Hanifen. Among other things, the letter included a calculation of the 110 percent test and 160 percent test and stated the following:

> "As you know the two most important covenants are the 110 percent test and the 160 percent test. For the 160 percent test we must rely on the appraisal which is now approximately 16 months old. However, the 110 percent test is a cash flow test that can easily be checked. It appears as though the Stetson Hills Public Building Authority has not met the 110 percent test since June of 1987 . . . the 160 percent test is probably not being met for the same reason . . . it is our opinion that based on your statement to us and based on the project analysis, in addition to a Reserve Fund deficiency the Stetson Hills Public Building Authority is not

> meeting either the 110 percent or the 160 percent test."

(d) In or about May of 1988, and because of the fact that the 1986 security had not met the 160 percent test, the Company was compelled to add property to the 1986 assessment lien;

(e) Either because the property originally described in the January 4, 1988 appraisal as security for the 1988 Bonds was also insufficient, or else because the calculation of the required amount of the security was incorrect, additional property also was required to be subjected to the lien for the 1988 Bonds before May 20, 1988;

(f) On March 22, 1988, Central Bank wrote a letter to the attorney for the Company. Copies of the letter, were sent, or the information contained in the letter was made known, to defendant Kirchner, defendant Pring and defendant Hanifen. Among other things, the Central Bank letter stated the following:

> "We have completed our review of the appraisal dated January 4, 1988 prepared by Joseph L. Hastings. As you know we have also had the appraisal reviewed by Ed Elmer of our lending area, who we consider to be our resident expert . . . in connection with Mr. Elmer's review he has spoken directly with Mr. Hastings by telephone regarding certain issues. Based upon our review, and the recommendation given us by Mr. Elmer, we will require in our capacity as Trustee, that an independent review of the appraisal be conducted by a different appraiser, which may be selected subject to our approval. It is our preference that

Zaleski and Associates be engaged if possible for this purpose . . . "

The letter identified multiple deficiencies in the appraisal conducted by Hastings, which was proposed to be used for both 1986 bonds the May 1988 security and which was in fact eventually used for such security, despite the deficiencies.

(g) On or about March 31, 1988, the Company refused to conduct or arrange for an independent review of the Hastings appraisal;

(h) The Summary Appraisal attached to the Official Statement for the 1988 Bonds failed to disclose that the January 4, 1988 appraisal was not prepared in conformance with the requirements of the Code of Professional Practice of the American Institute of Real Estate Appraisers;

(i) Real estate sales of single family residential property in El Paso County had declined materially in 1987, and this decline, which had continued during 1988 and was likely to persist, posed a material risk that the Company would not meet its sales projections and would not be able to supply additional property as collateral in the event of a deficiency in the 160% test;

(j) With the prior knowledge of the underwriter, the Company refused to initiate an independent review of the 1988 Bond appraisal but instead on a May 18, 1988 letter agreement with defendant Central Bank agreed that a new appraisal of the 1988 Bonds security would not be commenced until December 1988, when an appraiser other than Joseph Hastings, specifically Gerald Zaleski, would be retained;

(k) Defendant Pring, based upon his decision (also undisclosed to investors) to extend no further credit to his Stetson Hills development, had arranged to receive and did receive $1,966,000 of the $9.4 million paid to AmWest from the proceeds of the 1988 Bond sales. Also concealed from investors was the fact that this cash payment to Pring included payment for the collateral touted as security for the 1988 Bonds (but which AmWest had not been able to pay for, except by means of cash received from bond proceeds), and also payment for property now needed as additional collateral for the earlier, 1986 Bonds, that collateral having already dwindled below the "160% test";

(l) AmWest, already foundering because of disappointing sales and increasing cash flow problems, had been forced to call upon its line of credit at Capitol Federal Bank in order to replenish the 1988 Bond Reserve Fund, from which it had been compelled to draw in order to make the payments due in late 1987 on the 1986 Bonds.

43. The Official Statement for the 1988 Bonds was materially false and misleading in failing to disclose any and all of the adverse information set forth in paragraph 42 above and in making it appear that the appraisal for the 1988 Bonds was reliable, prudent and correct, and that the 1988 Bonds were amply secured by the purported value of the 272 acres subject to the assessment lien.

44. In accordance with the May 13, 1988 letter agreement, in about November of 1988 the Company hired Gerald Zaleski of Colorado Springs to provide an

updated appraisal report of the property securing the 1986 and 1988 Bonds.

45. In late 1988 Zaleski gave a preliminary estimate not only that the land securing the 1988 Bonds would not be worth 160% of the bonds, but that the land value was less than the principal amount of the outstanding bonds.

46. The Company then refused to authorize completion of the appraisal, and later indicated that it did not have funds to make required payments to keep the debt service current and did not have the ability to exercise its option to purchase additional land to add to the property securing the 1988 Bonds.

47. Early in 1989 defendant Kirchner retained an expert appraiser to review the work of Hastings and of Zaleski; this appraiser advised that more conservative assumptions than those used by Zaleski might be appropriate and indicated that if his own appraisal were completed it would probably show values substantially lower than Zaleski's estimates.

48. On April 7, 1989, defendant Kirchner advised at least some of its customers that it would purchase the 1988 Bonds at a price of 25 percent of face value and the 1986 Bonds at 50 percent of face value.

49. Other than the offer which Kirchner made to its own customers on April 7, there is presently no market for the 1988 Bonds held by the Plaintiff Class.

50. On April 10, 1989, Central Bank notified holders of the 1986 and 1988 Bonds that an event of default had occurred by virtue of refusal of the developer to provide the appraisal.

51. Upon information and belief, there are not funds in the developer's Reserve Account sufficient to pay interest beyond December of 1988; accordingly, the 1988 issue will be in monetary default on June 30, 1990.

52. Beginning at least in early 1988, each of the defendants individually and in concert engaged in or aided and abetted a plan, scheme and unlawful conspiracy and course of conduct, pursuant to which they knowingly and recklessly engaged in acts, transactions, practices and courses of business which operated as a fraud upon plaintiffs and other members of the Class including the concealment of material facts in connection with the 1988 Official Statement. The purpose and effect of such scheme was to sell the 1988 Bonds to the public in June of 1988, to perpetrate a fraud on the public in order fraudulently to conceal deficiencies and risks of the security for the bonds and to inflate the price of the Bonds, and to conceal adverse facts concerning the developer's financial condition and performance and future business prospects, and concerning the alleged "160 percent" security for the Bonds and the method of calculating the value and the required amount of the security.

53. Defendant Pring, because of his position of control and authority as an executive officer of the Company was able to and did directly or indirectly control the material content of the Official Statement.

54. Defendant Pring had a duty properly to disseminate accurate and truthful information with respect to the Developer's operations, financial condition and prospects, and with respect to the property allegedly securing

the 1988 issue and the method of calculating or appraising the value of the property.

55. Defendant Pring participated in the wrongdoing complained of in order successfully to market the Bonds with a view toward being able to use the proceeds to repay increasingly burdensome obligations of the Company, in order to protect his considerable personal financial stake in the Company.

56. Defendants Kirchner and Hanifen pursued the conspiracy, common enterprise and course of conduct with the other defendants and also aided and abetted and rendered substantial assistance in furtherance of the wrongdoing complained of herein.

57. The underwriter defendants, in part through their counsel, conducted or participated in investigations, known as "due diligence" investigations into the business, operations and future business prospects of the developer and into the security and the method of appraisal of the security for the 1988 issue.

58. In the course of such due diligence investigations, the underwriter defendants discussed the timing and terms of the 1988 offering, and of the contents of the Official Statement, and devised and agreed upon a common course of conduct and enterprise, i.e. the sale of the 1988 Bonds to the public, and the disclosures that would be made in the Official Statement and what information would be omitted therefrom.

59. Defendants Hanifen and Kirchner also aided and abetted and rendered substantial assistance in furtherance of the wrongdoing complained of herein. Both of

these underwriters had knowledge of, or recklessly disregarded, the facts which rendered the Official Statement for the 1988 issue misleading, and which are set forth in paragraph 42 above.

60. Hanifen and Kirchner were market makers in the 1988 Bonds. By their conduct and statements, they assisted in creating and maintaining the market for the Bonds and in concealing adverse information about the Bonds.

61. Central Bank aided and abetted and rendered substantial assistance in furtherance of the wrongdoing complained of herein.

62. Because of its role as Trustee of the 1986 Bonds, and because of its role in preparing to act as Trustee of the 1988 Bonds, Central Bank was well aware of the very substantial hazards connected with reliance upon Mr. Hastings' appraisal of the collateral for the 1988 Bonds. Such risks known to Central Bank included among other things the conclusion of Mr. Elmer, Central Bank's in-house appraiser, that the property values arrived at by Mr. Hastings were "unjustifiably optimistic."

63. Central Bank knew that the Official Statement for the 1988 Bonds held out Central Bank as the Trustee for those bonds.

64. Plaintiffs trusted that Central Bank would carry out responsibly its role as Trustee for the 1986 Bonds and as Trustee for the 1988 Bonds, and said trust was known or should have been known to Central Bank.

65. Despite the facts and its knowledge of the facts set forth in paragraphs 62-64 above Central Bank knowingly or recklessly took affirmative steps to postpone any independent review of the Hastings appraisal, and knowingly or recklessly failed to take reasonable steps to alert investors in the 1988 Bonds of any of the risks connected with the Hastings appraisal, of which Central Bank as Trustee was fully aware. By its acts and its failures to act, Central Bank thus aided and abetted the fraud complained of herein.

FIRST CLAIM FOR RELIEF

(Section 10(b) of the Exchange Act and Rule 10b-5 of the Securities and Exchange Commission)

66. Plaintiffs incorporate by reference their allegations contained in paragraphs 1 through 65 above.

67. This claim is asserted by plaintiffs against all defendants and is based upon §§ 10(b) and 20 of the Exchange Act, 15 U.S.C. §§ 78j(b) and 78t and Rule 10b-5 promulgated thereunder.

68. Beginning at least in early 1988, the underwriter defendants, Pring, and the Authority individually and in concert, engaged in and aided and abetted a plan, scheme and unlawful conspiracy and course of conduct, pursuant to which they fraudulently and recklessly engaged in acts, transactions, practices, and courses of business which operated as a fraud upon plaintiffs and other members of the Plaintiff Class, and omitted to state material facts, as set forth in paragraph 42 above, necessary in order to make the statements made in the 1988 Official Statement not misleading to plaintiffs.

69. Each of the defendants referenced in paragraph 68 participated in and joined in the alleged scheme and course of conduct specified above, and each is liable primarily for the aforesaid wrongful acts and particularly for the fraudulent omissions as specified in paragraph 42 above.

70. Defendant Pring is secondarily liable for the fraudulent omissions set forth in paragraph 42 above, since: (1) even if he himself did not prepare the Official Statement, he knowingly joined and participated in the conspiracy set forth above to conceal the true facts about the Company, about the 1988 Bonds and about the security for the Bonds; by acquiescing in and failing to correct the omissions set forth above, he committed acts in furtherance of the conspiracy, thereby rendering him liable for all wrongful acts committed during the conspiracy; (ii) due to his positions of control and influence specified in paragraphs 23 through 26 above, Pring was a control person within the meaning of § 20 of the Exchange Act and is therefore liable for all the acts of the issuer and of the Developer; and (iii) he is liable as an aider and abetter since he had knowledge of the true facts which were not disclosed in the Official Statement, and he rendered substantial assistance in the wrongdoing.

71. Defendants Kirchner and Hanifen are primarily liable under § 10(b) for knowingly or recklessly marketing the 1988 Bonds by means of the misleading Official Statement, and are secondarily liable for the reasons set forth in paragraphs 56-60 above.

72. The omitted facts would have been material to a reasonable investor in the 1988 Bonds.

73. Defendant Central Bank is secondarily liable under § 10(b) for its conduct in aiding and abetting the fraud, as set forth above.

74. As a result of the foregoing, the 1988 Bonds were marketed and the after market was artificially inflated or maintained; in ignorance of the false and misleading nature of the Official Statement, plaintiffs relied, to their damage, on the integrity of the market both as to the price and as to whether or not the Series 1988 Bonds were marketable in the first instance. Plaintiffs have suffered substantial damages as a result of the wrongs alleged herein.

WHEREFORE, plaintiffs pray for judgment, as follows:

(a) Awarding plaintiffs compensatory damages in an amount which may be proven at trial, together with interest thereon including prejudgment interest;

(b) Awarding such other and further relief as the Court may find just and proper.

JURY DEMAND

Plaintiffs respectfully demand trial by jury.

GERSH & DANIELSON

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FIRST INTERSTATE BANK OF DENVER, N.A. and JACK K. NABER,

Plaintiffs,

vs.

KIRCHNER MOORE AND COMPANY, et al

Defendants,

IDS HIGH YIELD TAX-EXEMPT FUND, INC.

Plaintiff,

vs.

KIRCHNER MOORE AND COMPANY, et al

Defendants.

Civil Action No. 89-F-1250

Civil Action No. 89-F-1806

CENTRAL BANK AND TRUST COMPANY OF DENVER'S ANSWER TO AMENDED COMPLAINT OF PLAINTIFFS FIRST INTERSTATE OF DENVER, N.A. AND JACK K. NABER

(Filed Mar. 20, 1990)

Defendant, Central Bank and Trust Company of Denver, now known as Central Bank Denver, N.A. (hereinafter referred to as "Central Bank"), by and through its attorneys, Adam M. Dalmy and John E. Bush, hereby

answers the Amended Complaint of Plaintiffs First Interstate Bank of Denver, N.A. and Jack K. Naber, as follows:

1. Central Bank admits the allegations in Paragraph 1.

2. Central Bank admits the allegations in Paragraph 2.

3. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 3 and therefore denies same.

4. Central Bank admits the allegations in the first sentence of Paragraph 4, but is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations therein and therefore denies same.

5. Central Bank denies the allegations in Paragraph 5 to the extent they are inconsistent with the applicable Bond documents, which documents speak for themselves.

6. Central Bank denies the allegations in Paragraph 6 to the extent they are inconsistent with the applicable Bond documents, which documents speak for themselves.

7. Central Bank denies the allegations in Paragraph 7 to the extent they are inconsistent with the Official Statement and/or the applicable Bond documents, which documents speak for themselves.

8. Central Bank denies the allegations in Paragraph 8 to the extent they are inconsistent with the Official Statement and/or applicable Bond documents, which documents speak for themselves.

9. Central Bank denies the allegations in Paragraph 9 to the extent they are inconsistent with the applicable Bond documents, which documents speak for themselves.

10. Central Bank denies the allegations in Paragraph 10.

11. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 11 and therefore denies same.

12. Central Bank admits that jurisdiction and venue are correct in this Court but denies all other allegations.

13. Central Bank admits that jurisdiction and venue are correct in this Court but denies all other allegations.

14. Central Bank admits the allegations in the first sentence of Paragraph 14, but is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in the last sentence and therefore denies same.

15. Central Bank is without sufficient information or knowledge or [sic] form a belief as to the truth of the allegations in Paragraph 15 and therefore denies same.

16. Central Bank admits the allegations in Paragraph 16.

17. Central Bank admits the allegations in Paragraph 17.

18. Central Bank admits the allegations in Paragraph 18.

19. Central Bank admits the allegations in Paragraph 19.

20. Central Bank admits the allegations in Paragraph 20.

21. Central Bank admits the allegations in the first sentence of Paragraph 21, but is without sufficient information or knowledge to form a belief as to the truth of the remainder of the allegations therein and therefore denies same.

22. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 22 and therefore denies same.

23. Central Bank admits the first two sentences in Paragraph 23, but is without sufficient information or knowledge to form a belief as to the truth of the remainder of the allegations therein and therefore denies same.

24. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 24 and therefore denies same.

25. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 25 and therefore denies same.

26. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 26 and therefore denies same.

27. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 27 and therefore denies same.

28. Central Bank admits the allegations in Paragraph 28.

29. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 29 and therefore denies same.

30. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 30 and therefore denies same.

31. Central Bank denies the allegations in Paragraph 31 to the extent they are inconsistent with the applicable Bond documents, which documents speak for themselves.

32. Central Bank admits the allegations in Paragraph 32.

33. Central Bank admits the first two sentences of Paragraph 33, but is without sufficient information or knowledge to form a belief as to the truth of the allegations in the remainder of said Paragraph and therefore denies same.

34. Central Bank denies the allegations in Paragraph 34 to the extent they are inconsistent with the Official Statement and/or applicable Bond documents, which documents speak for themselves.

35. Central Bank denies the allegations in Paragraph 35 to the extent they are inconsistent with the applicable Bond documents, which documents speak for themselves.

36. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 36 and therefore denies same.

37. Central Bank denies the allegations in Paragraph 37 to the extent they are inconsistent with the applicable Bond documents, which documents speak for themselves.

38. Central Bank denies the allegations in Paragraph 38 to the extent they are inconsistent with the appraisal, which appraisal speaks for itself.

39. Central Bank denies the allegations in Paragraph 39 to the extent they are inconsistent with the Official Statement and/or applicable Bond documents, which documents speak for themselves.

40. Central Bank denies the allegations in Paragraph 40 to the extent they are inconsistent with the applicable Bond documents, which documents speak for themselves.

41. Central Bank denies the allegations in Paragraph 41 to the extent they are inconsistent with the Official Statement and/or Bond documents, which documents speak for themselves.

42. Central Bank denies Paragraph 42 and subparagraphs a to l of Paragraph 42 except that Central Bank admits that John E. Conrad wrote a letter to Central Bank dated January 25, 1988 and Central Bank wrote a letter to Greg Timm of Stetson Hills, and admits that property was added to the 1986 Assessment Lien to meet the 160% test on or about May, 1988.

43. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 43 and therefore denies same.

44. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 44 and therefore denies same.

45. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 45 and therefore denies same.

46. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 46 and therefore denies same.

47. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 47 and therefore denies same.

48. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 48 and therefore denies same.

49. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 49 and therefore denies same.

50. Central Bank denies Paragraph 50.

51. Central Bank denies Paragraph 51.

52. Central Bank denies Paragraph 52.

53. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 53 and therefore denies same.

54. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 54 and therefore denies same.

55. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 55 and therefore denies same.

56. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 56 and therefore denies same.

57. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 57 and therefore denies same.

58. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 58 and therefore denies same.

59. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 59 and therefore denies same.

60. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 60 and therefore denies same.

61. Central Bank denies Paragraph 61.

62. Central Bank denies Paragraph 62.

63. Central Bank denies Paragraph 63.

64. Central Bank denies Paragraph 64.

65. Central Bank denies Paragraph 65.

66. Central Bank denies Paragraph 66.

67. Central Bank denies Paragraph 67.

68. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 68 and therefore denies same.

69. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 69 and therefore denies same.

70. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 70 and therefore denies same.

71. Central Bank is without sufficient information of knowledge to form a belief as to the truth of the allegations in Paragraph 71 and therefore denies same.

72. Central Bank denies Paragraph 72.

73. Central Bank denies Paragraph 73.

74. Central Bank is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 74 and therefore denies same.

FIRST AFFIRMATIVE DEFENSE

The claim against Central Bank fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' damages, if any, were caused by the negligence of Plaintiffs and in particular First Interstate Bank of Denver, N.A. (hereinafter referred to as "First Interstate") or the acts, omissions or negligence of the third parties other than Central Bank.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs would be unjustly enriched if granted the relief which they seek.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by First Interstate's own fraud and/or its own violation of state or federal securities laws.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the applicable Statute of Limitations.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' knew or should have known of the alleged misrepresentations and omissions and their claims are barred by its assumption of risk, and Plaintiffs are estopped to assert a claim against Central Bank.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by laches.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs failed to litigate their damages, if any.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by waiver and estoppel.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the Doctrine of Unclean Hands.

ELEVENTH AFFIRMATIVE DEFENSE

Central Bank acted in a prudent manner, faithfully performing its duties under the Indenture of Trust, using

the same degree of care and skill as a prudent man would exercise or use under the circumstances in the conduct of its own affairs, and owed no duty to Plaintiffs except as stated in the 88 Indenture of Trust and only after Central Bank executed the 88 Indenture of Trust.

TWELFTH AFFIRMATIVE DEFENSE

Central Bank acted in good faith in reliance upon opinion and advice of counsel.

THIRTEENTH AFFIRMATIVE DEFENSE

Central Bank, pursuant to the Indenture of Trust, was entitled to and did in fact rely upon certificates signed by the Authority, Amwest and others as sufficient evidence of facts contained therein.

FOURTEENTH AFFIRMATIVE DEFENSE

First Interstate had equal access to the Information and facts which Plaintiffs' claims were misrepresented and/or omitted.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claim against Central Bank is barred because of Central Bank's lack of knowledge.

SIXTEENTH AFFIRMATIVE DEFENSE

Central Bank made no false statements or representations.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' reliance upon the alleged misrepresentations, if any, were not reasonable or justified and Plaintiffs' claim is barred by its own independent investigation of facts.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiffs failed to exercise due diligence and care in purchasing their Bonds.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiffs' damages, if any, were caused by factors over which Central Bank had neither responsibility nor control.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff, Naber's damages, if any, were caused by First Interstate.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiffs have failed to satisfy the conditions precedent to their right to the relief requested.

TWENTY-SECOND AFFIRMATIVE DEFENSE

First Interstate knew, or should have known, or recklessly disregarded the facts which allegedly rendered the

Official Statement misleading and/or the misrepresentations and/or omissions alleged by Plaintiffs and failed to disclose to Plaintiff, Naber, and its other customers, and their damages, if any, were the direct and proximate result of First Interstate's actions and/or omissions.

TWENTY-THIRD AFFIRMATIVE DEFENSE

First Interstate aided and abetted and rendered substantial assistance in furtherance of the allegations complained of in the Amended Complaint and First Interstate knew or recklessly disregarded said facts or omissions and failed to disclose same to its customers and is the proximate cause of Plaintiff, Naber's damages, if any.

WHEREFORE, Central Bank requests that this Court dismiss with prejudice the Amended Complaint of Plaintiff against Central Bank, that Plaintiff take nothing by way of Its Complaint against Central Bank, and that Central Bank be awarded its costs, attorneys' fees and such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Adam M. Dalmy
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 89-F-1250

FIRST INTERSTATE BANK OF DENVER, N.A., and JACK K. NABER,

Plaintiffs,

vs.

KIRCHNER MOORE & COMPANY, et al.,

Defendants.

CENTRAL BANK'S MOTION
FOR SUMMARY JUDGMENT

Defendant Central Bank & Trust Company of Denver ("Central Bank"), pursuant to Rule 56(b), Fed. R. Civ. P., hereby moves for summary judgment against Plaintiffs and their claims against Central Bank and as grounds therefor incorporates its brief in support of the motion and further states as follows:

1. Plaintiffs have sued several parties involved in the 1988 issuance of tax-exempt bonds relating to the Stetson Hills Development located near Colorado Springs, Colorado, claiming violations of § 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5.

2. Central Bank, which acted as the Indenture Trustee on the 1988 bond issue, is accused in Plaintiffs' Amended Complaint of aiding and abetting the alleged primary securities fraud violations of other parties involved in the transaction, including the underwriters,

the issuer of the bonds and a principal of the developer of the subdivision.

3. To be found liable as an aider and abettor, Plaintiffs must allege and prove, among other things, that Central Bank had a conscious intent to further the alleged violation and that it breached a duty to act.

4. Pursuant to the Trust Indenture Act of 1939, 15 U.S.C. § 77aaa-77bbbb, as well as the Indenture of Trust, under which Central Bank acted in this transaction, Central Bank's duties are extremely limited. Specifically, Central Bank has no duty to make the disclosures or to take the actions which Plaintiffs allege were lacking here.

5. Plaintiffs have not alleged, nor could they under the undisputed facts of this case, that Central Bank has a conscious intent to further the alleged fraud.

6. Thus, as a matter of law, Plaintiffs cannot prove that Central Bank is liable as an aider and abettor under the undisputed facts of this case.

Dated this 31st day of May, 1990.

IRELAND, STAPLETON, PRYOR
& PASCOE, P.C.
Tucker K. Trautman
Neal S. Cohen
Polly A. Atkinson

By /s/ Tucker K. Trautman
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

DEPOSITION OF EDGAR J. [illegible]MER January 22, 1990

Civil Action No. 89-F-1250

* * *

Q [46] So is it fair to say that you do not recall another situation in which you were asked to review an appraisal relating to a bond issue in which Central Bank was acting as trustee?

A That's fair to say, yes.

* * *

Q [153] (BY MR. HATCH) But let's go back. I mean, keeping in mind your testimony that on – in March of 1988, it was your opinion that the Hastings appraised values appeared to be optimistic –

A Could be optimistic.

Q Are you changing your testimony now?

A I am saying that the objections I had in that were "unjustifiably" and "investigation." They appear to be – they could be – I guess there is a definition in terms of could be or appear to be – optimistic in light of the market conditions at the time.

Q And has anything happened between March 22, 1988, and today that would change your opinion that the values determined by Mr. Hastings appeared to be optimistic?

A No.

* * *

Q [124] At this meeting, did you suggest to her that the appraisal be reviewed by an independent appraiser?

A I am not sure I suggested it at this meeting or – I am sorry – at that particular meeting or at some other time in conversation, either on the telephone or in a meeting format, I think I did recommend that an independent outside appraiser be hired to review it.

Q Had you essentially come to that conclusion after your review of the appraisal?

A Well, partly as a result of that. The fact that I had these questions that had been raised in my review, and the fact that I didn't have the opportunity or the time, by any stretch of the imagination, to attempt to do a detailed review of the report, I felt I had to make a recommendation of an outside appraiser.

DEPOSITION OF KENNETH B. BUCKIUS
January 17, 1990

Volume I

Civil Action No. 89-F-1250

* * *

Q [52] (BY MR. NETZORG) What did you find out?

A That he had followed that methodology.

Q How did you determine that he had followed that methodology?

A We received a certification from Mr. Hastings.

Q Any other ways that you determined it?

A No. We are entitled to rely on that.

(Mr. Dalmy conferred with deponent off the record.)

A (Continuing) Also, we had an in-house person who was an appraiser, and in conversations with him, he indicated that he felt the methodology had been followed.

Q (BY MR. NETZORG) When did he indicate that?

A Would have been late March or early April of '88.

Q Who was that?

A Excuse me?

Q Who was that in-house appraiser, Mr. Elmer?

A Mr. Elmer.

Q Did you talk to Mr. Elmer personally?

A [53] Yes.

Q On how many occasions, about this issue?

A Once.

Q When was that?

A I am not sure of the exact date. I don't recall the exact date.

Q Did – well, what did Mr. Elmer say to you in your conversation with him?

A I don't recall the exact particulars of the conversation.

Q Generally what did he say?

A It was a discussion with regards to what his concerns had been and a conversation he had had with Mr. Hastings. And he had initially had a concern about the methodology, but that that had been – that he felt, after talking to Mr. Hastings – I am not sure what else he did. But he felt that the methodology had been followed. More or less backed off from his concerns with regards to the methodology.

Q Was there anything else that he said to you?

A I really can't recall the specifics of the conversation. That was my main recollection.

* * *

Q [134] So you didn't believe it was necessary for Mr. Hastings' report to comport with the qualified appraisal report definition set forth on Page 13 of the trust indenture, is that fair, Page – Exhibit 219?

A I had no reason to question Mr. Hastings' qualifications.

Q At what time? At any time?

A At any time.

Q You didn't have any reason to question his qualifications after Mr. Conrad raised all the questions about Mr. Hastings?

MR. CHASE: Objection. Mischaracterizes Mr. Conrad's correspondence.

A No. Mr. Conrad brought up concerns he [135] had – specific concerns with regards to comparables for – and methodology, I believe, and did not say anything with regards to the qualifications of Mr. Hastings.

* * *

Q [288] Okay. Now, there was a meeting, apparently, as I understand it from the testimony to date, on March 31, 1988, where Mr. Timm discussed with you and, I think, Mr. Jeffers and Mr. Douglas the bank's requirement for an independent review of the appraisal.

Do you recall being at that meeting on March 31, 1988?

A I recall – I recall that meeting.

Q Okay. Do you recall that anyone else, other than the people I have just noted, were present at that meeting?

A I have notes on that meeting. Do you have a copy of those?

Q Look at Exhibit 74-A and tell me if those are your notes.

A (Deponent examined exhibit.)

Yes, they are.

Q Okay. Those are your notes?

A Yes.

Q Okay. And did you make them at the meeting, on March 31, '88, or did you make them after the meeting?

A I believe I made most of them during the meeting.

Q [289] Well, which portions of them, if any, did you make either before or after the meeting?

A I don't recall, the bottom portion under verification (indicating), when that was done.

Q Okay. Let's go through your notes. Okay?

KB stands for you?

A Myself.

Q GT is Greg Timm?

A No. Greg Timm is spelled out.

Q Well, in the fourth line –

A Oh, I'm sorry.

Q – of the notes – I'm ahead of you.

A Okay.

Q Okay. "GT willing to put up additional ground, $2 million," what does that mean?

A Just that they were going to provide additional ground relative – the value would have been around 2 million.

Q Okay. Additional ground for what?

A It was to bring the tests into compliance.

Q For which deal?

A 1986.

Q And what was your response to that statement of Mr. Timm's?

MR. DALMY: At that time?

[290] MR. NETZORG: Yes.

Q (BY MR. NETZORG) All the questions I'm going to ask you right now are about what happened at the March 31, 1988 meeting. Okay?

A Okay.

Q So how did you respond?

A I don't believe I responded to each item individually.

Q Well, was there a dialogue that occurred at the meeting?

A I think it was a general discussion of what they were proposing.

Q Okay. And what was the discussion surrounding the issue of Mr. Timm being willing to put up an additional $2 million in ground for the '86s?

A It surrounded the need to put – to have additional property subjected to the 1986 assessment lien, to bring the tests into compliance.

Q Okay. Now, Mr. Timm had stated, in January of 1988, January 27, if you look at Exhibit 65, that, quote, We are ready to immediately make these additions, referring to additional ground.

And why hadn't the land been put in immediately, as Mr. Timm had previously represented?

MR. CHASE: Object to the use of the word [291] "represented."

MR. NETZORG: As he had previously stated.

A I don't know.

Q (BY MR. NETZORG) Did you ask him why?

A I don't recall.

Q Okay. Now, the next line says, "doesn't want to do new appraisal and willing to ask Zaleski to do appraisal at end of the calendar year."

Is that right?

A That's correct.

Q What does that mean?

MR. RUH: Objection, foundation as to this witness' knowledge as to what Mr. Timm meant.

MR. NETZORG: I didn't ask what Mr. Timm meant.

MR. RUH: Well, I think it –

MR. NETZORG: I asked what the language he wrote down meant. If he doesn't have a foundation for that –

MR. RUH: Okay. I though you meant what Mr. Timm meant by his knowledge.

Q (BY MR. NETZORG) What did you mean when you wrote that language down?

A I think it reflects their view that they didn't want to have a new appraisal performed at that [292] point in time and that they were proposing that, in order to avoid these kinds of problems in the future, that we could get – that we could have a calendar-year-end appraisal performed.

Q And what was your response?

A I don't recall that I had any response to that particular item at that time.

Q Were you familiar with the requirements of the '86 indenture on March 31, '88?

A Probably not off the top of my head.

Q Okay. Well, you knew, though, that, under the terms of the '86 indenture, that the trustee was able to select an appraiser out of a list of three for purposes of receiving a qualified appraisal report annually; isn't that right?

A The definition of qualified appraiser did provide that the trustee could select from a list of three.

* * *

Q [295] And when we broke, isn't it the case that, as of March 31, '88, you knew that, as the trustee, you could require a qualified appraisal report at the end of the calendar year on the '86s?

A I don't know whether I knew that at that date or not, or whether I could recall it.

Q Okay. But it is a fact, though, as we've seen from the various documents, correct?

A [295] The documents state that the trustee can receive evidence satisfactory to it –

Q Of compliance –

A – of the 160 test. And the definition of the 160 test talks about a qualified appraisal.

Q Okay.

A There seems to be ambiguity there as to, as [296] I've stated before, it may be – a bring-down certificate might be sufficient.

Q Let's not leave out the bring-down certificate.

A Well, it's different –

Q I really don't intend to.

A It's different –

Q I know that's important to you.

A And it's different than an appraisal.

Q And it is different than an appraisal.

But nevertheless, even a bring-down certificate would start with a full-blown appraisal and work through the time that has elapsed between the appraisal and the date of the certificate, as you understand it; isn't that right?

A I believe so.

Q Okay. Now, Mr. Timm did offer to have Mr. Zaleski do the appraisal at the end of the calendar year, didn't he, in this meeting on March 31, '88?

A He stated in his proposal that he was willing to ask Mr. Zaleski.

Q [296] Okay. And Zaleski was the appraiser of preference expressed in Exhibit 72, the March 22 letter, right?

A (No response.)

Q [297] You recall that, don't you, without even looking at it?

MR. RUH: Objection as to form.

A 72?

Q (BY MR. NETZORG) Yes, 72.

A Yes. The Document 72 does state the preference.

Q Okay. Now, while you're on 72, isn't it also correct that, at the time that you approved the content of Exhibit 72, that Mr. Elmer had recommended an independent review of the appraisal to be conducted by a different appraiser?

MR. DALMY: I am going to object to that question as somewhat mischaracterizing the previous testimony.

MR. NETZORG: I'm asking a new question.

Q (BY MR. NETZORG): Isn't that the case?

A I didn't speak directly with Mr. Elmer. As to these items, my understanding is that he recommended an independent review of the appraisal.

Q Okay. Now, go back to Exhibit 74-A, your notes. And can you tell me what the next line, "did take into

consideration bulk sales in Hastings appraisal," what that means.

A It would mean that the methodology utilized [298] by Mr. Hastings did include the bulk sale, the methodology required under the documents.

Q And that's what Mr. Timm told you; is that right?

A That's correct.

Q Okay. Did you do anything to check that out, after this March 31, 1988 letter?

A I believe, as I testified, after this meeting, I did have a conversation with Mr. Elmer –

Q Okay.

A – where he indicated that the methodology followed was proper.

Q Now, does this set of notes help you place any more accurately the date of the conversation that you had with Mr. Elmer? And at least we can get to it had to be sometime –

A It would have been after this meeting.

Q Right. After the March 31 meeting, right? Can you get any closer?

A I believe I had written – I wrote a letter sometime in April. And it would have been prior to that.

Q Okay. Will you read the language that appears next to Comparables in Exhibit 74-A.

A (Deponent examined exhibit.)

[299] Okay.

Q Okay. What does it say? Could you read it out loud, please.

A Oh, I'm sorry.

"Many recent sales have been lender foreclosures. Hastings did consider the end-of-year sales to make sure they are in conformance."

Q And what did you understand –

Was this another statement made by Mr. Timm?

A I believe so.

Q What did you understand him to mean?

A That Mr. Hastings did look at more recent comparables.

Q Okay. What does "end-of-year sales" refer to?

A I don't know specifically.

Q Okay. Well, did you understand that Mr. Hastings had considered lender foreclosures in his appraisal?

A No. That's not my understanding.

Q You understood that he had not considered lender foreclosures?

A I don't know whether he did or didn't.

* * *

Q [322] (BY MR. NETZORG) Don't focus on the definitional page. You see the first – the certificate of qualified appraiser. Skip the definitional page. And then

you see the signature page for the certificate of qualified appraiser. Okay?

A Right.

Q And is that Mr. Hastings' signature?

MR. CHASE: Objection, no foundation.

Q (BY MR. NETZORG): Do you believe it to be his signature?

A I assume so.

Q Okay. Do you recall having received this [323] letter from Mr. Hastings?

A I recall that we received it, yes.

Q Okay. When did you receive it?

A I don't know.

Q Okay. In this letter, Hastings does provide comfort as to his use of comparable sales, doesn't he, Paragraph No. 1?

A He does speak to the use of other comparable sales.

Q And based on his statements that he had reviewed other comparable sales, did you – excuse me – were you satisfied as to the concern which had been raised relating to comparable sales?

A As I recall, this gave us some comfort. But with regards to the amendment, we still required, I think, certification.

Q [323] Okay. Now, the second paragraph is comfort relating to bulk sale discount, correct?

A Yes.

Q As a result of having reviewed Paragraph No. 2, were you – were your concerns on the methodology for determining the bulk sale discount allayed?

A Again, it gave us – as I recall, it gave us some comfort. But as I stated, I recall that we [324] also continued to require certifications with the amendment.

* * *

[336] Well, did this agreement, Exhibit 240, satisfy your concerns on having an appraiser who was acceptable to Central Bank to perform this December 1, 1988 appraisal?

MR. RUH: Objection, mischaracterizes the testimony as to acceptable appraiser.

A This agreement was to clarify what evidence would be satisfactory to us in the provision of the certifications as to the 110 and 160 test.

Q (BY MR. NETZORG) In your April 8th letter, you used the name of an appraiser, and that name was Zaleski. Right?

A That's correct.

Q Did that happen as a matter of coincidence, or was there a reason you used some appraiser's name?

MR. CHASE: Objection, asked and answered.

A As I mentioned before, the name was brought to us in the proposal by Mr. Timm – my understanding is that's because Mr. Zaleski had performed similar [337]

types of appraisals – and, number two, because Mr. Conrad had mentioned him.

Q (BY MR. NETZORG) And you also checked out his reputation with Mr. Elmer, didn't you, Mr. Zaleski's reputation with Mr. Elmer?

A I don't recall asking Mr. Elmer about Mr. Zaleski.

Q Do you know if Cherry Crandall did it?

A I don't know.

Q Okay. Did anybody, to your knowledge, check out Mr. Zaleski's reputation?

A I don't know.

Q Okay. But it was important to have the agreement, Exhibit 240, executed in advance of the closing of the '88s; is that right?

MR. DALMY: I am going to object to the term "important" as vague and ambiguous as to who or what.

A The agreement was done in order to clarify what we would require in the future, to avoid any confusion.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

DEPOSITION OF CHERYL ANN CRANDALL
January 25, 1990

Civil Action No. 89-F-1250

* * *

Q [58] When was the first time that you became involved in a second Stetson Hills financing?

A. There were – I first recall some discussions about a second financing in very late 1987, I believe.

* * *

Q. [72] Was it your understanding early on in the deal, as early as you can recall, as to the second financing, that an appraisal would be provided that covered not only the already-issued bonds but the property to be included in the new bond deal?

A I understood that we would get appraisals for each issue, not an appraisal that covered both.

Q Not one appraisal?

A That's correct.

Q Okay. Now, were you surprised when you-all received – "you-all" meaning Central Bank – received the January 4, 1988 magnum opus – I refer to it that way; it's a very bulky document – appraisal by Mr. Hastings that referred to both the '86 property and property to be included in the second deal?

MR. DALMY: I'm going to object to the form of that question as "surprised" as being vague and ambiguous.

* * *

Q [73] (BY MR. NETZORG) Well, in the typical way that –

A Well, I wasn't surprised. It simply wasn't adequate. I couldn't accept it. I needed them to be separate.

Q And what did you do when you received that?

A Advised Mr. Timm that I would need to have separate appraisals for each issue.

Q Okay. Did he have any problem with that?

A No.

Q Did you understand that Mr. Hastings would merely split out the '86 properties from the '88s?

A Yes.

Q Okay. And then you received certificates to that effect at some point later on, correct?

A Yes.

Q Okay. And I'll show those to you. And I think Mr. Buckius talked about them too. We'll see those later on. I tried to do it in order.

Will you look at Exhibit 145.

MR. CHASE: What is that, Skip?

MR. NETZORG: It's a December 10, '87 letter to Timm from Cherry. That's what it is.

Q (BY MR. NETZORG) Okay? And this letter starts out by confirming a telephone conversation [74] regarding the Cap Fed certificate maturities and the bond and reserve funds. And then there is a pretty detailed explanation of how much is where.

And then in the fourth paragraph, you tell Mr. Timm that there is a principal and interest payment due on December 30 of 654 grand. Do you see that?

A Yes.

Q Okay. Were you concerned, on December 10, '87, that that payment might not be made?

A No. I need to look at the indenture to recall. But I don't believe they had to make the payment until the day before the payment was due.

Q Okay. Now, you go on to say, unless that payment is due (sic), that amount will be transferred from the reserve fund to the bond fund on that date. Right?

A Right.

Q And then there is a requirement to replenish within 60 days.

A Right.

Q And did you understand that the Authority intended to use the reserve fund as a source of capital for that 60-day period?

A I had no understanding at all that –

They did not make the payment, and we did

* * *

[75] use the reserve fund. But I had no understanding about what they had intended to do.

Q And then they did replenish it, didn't they?

A Yes, they did.

Q And did they replenish it in a timely fashion?

A Yes, they did.

Q And the source of the funds to replenish was from Cap Fed funds?

A I don't know where they came from. I don't recall. I mean –

Q There weren't sufficient house sales at that time – excuse me – lot sales at that time to produce that kind of revenue –

A No.

Q - were there?

A (Deponent shook head.)

* * *

Q [80] Okay. And did that cause you any concern, that the values were approximately the same?

A I was curious. I expected to see some difference. But I wasn't concerned. I just noted that they were the same.

Q Okay. Well, you knew that the real estate market in Colorado Springs was in a state of decline?

A I did not know that. I had been advised that or heard of it and it had been discussed. But I didn't know that.

* * *

Q [80] I'm not an expert on the English language, and I was using the word "knew" or "know" the way we do in common parlance.

Who had advised you that the real estate market was in a state of decline, when you received this appraisal?

A John Conrad had called me and advised me that, based on whatever work he had done, whatever sources were available to him, that he believed that there was a decline in property values in El Paso County.

* * *

Q [84] Why did you have a conversation with Mr. Elmer?

A I had previously asked him to take a look at the appraisal that we had received from Mr. Hastings – by Mr. Hastings, received from the Authority.

Q And why did you ask him to look at the appraisal?

* * *

A [84] There had been some questions raised. And not being knowledgeable or expert about real estate matters, I asked Ed to take a look at the appraisal and tell me whether or not he thought we should be concerned about anything.

Q Okay. What questions had been raised about the appraisal?

A Whether the comparable sales data that was used was current enough.

Q Okay. Any others?

A And whether or not a forced liquidation assumption had been used.

* * *

Q [95] And then the next thing was that you asked Elmer to contact Hastings?

A Yes.

Q Okay. And then did you have a subsequent meeting with Elmer about his contact with Hastings?

A Yes.

Q Okay. And these notes, then, are really two meetings down the road with Elmer, right?

A These notes were after he had the telephone conference with Hastings that I asked him –

Q Right.

A - to have.

* * *

Q [115] Okay. And as a result of your computation, you determined, as of January 31, 1988, that the 160 test was out of compliance; is that right?

A That is not right.

Q Well, didn't you determine –

A I didn't determine anything. This was an exercise for my benefit, in making sure that I had, conceptually, a good grasp of what these things meant.

Q When you did your exercise to determine – or to make sure that you conceptually had a good grasp, you computed the 160 test at 1.31, didn't you, ma'am?

A That was the number I worked to. Whether I was doing it directly, I don't know.

Q Okay. But that number was different than 160?

A That's correct.

Q It was less?

A Uh-huh.

Q So according to your own calculations, the 160 test was not coming up at 160 or more?

A That's correct.

Q And you did the 110 test and calculated it out at 1.33, right?

A Right.

* * *

Q [125] Okay. Now, looking at the next page – it's Page 27, as it's numbered in the right-hand corner -- it is dated 2-10-88.

And again, looking at your calendar, it appears there was a meeting with Mr. Johnson, Mr. Timm, Mr. Camirand and yourself at Kutak, right?

A Right.

Q Okay. And are these notes of that meeting?

A Yes.

(Mr. Gersh entered the deposition room.)

Q (BY MR. NETZORG) And also, your notes actually indicate Mr. Jeffers was present at that meeting, as well; is that right?

A Yes.

* * *

Q [129] Okay. Can you tell me what the nature of the discussions were surrounding both your question of validity of appraisal, as well as the comment of Mr. Timm.

A Well, my question was, "If land values, in fact, have declined" –

Q Okay.

A – "as a matter of common sense, one would expect that that new value would be something less than the original value."

Greg's comment was, "Well, they've remained substantially unchanged. But during that period of time, we've put $10 million worth of improvements into the property."

Q Was there any verification of his statement that occurred at the meeting, in other words, documents or receipts that were looked at or anything to that effect?

A No.

Q Did you believe Mr. Timm when he said they put in $10 million worth of improvements during that time frame?

A I didn't question him.

* * *

[140] Is it your belief that Mr. Hastings used the same methodology in his appraisal as to all of the pieces of property in the appraisal?

A Yes. It's clearly prescribed under the documents what that methodology is to be.

Q Okay. And so if there were questions that related to the methodology, the questions would be directed not only at the methodology as it related to [141] the '86 pieces of property but also to the property to be included in the '88 deal; isn't that right?

A I wasn't particularly concerned about the '88 deal at that point in time.

Q Okay. I understand that. But what I've said is true, isn't it? It was true at that time, that, even though you weren't concerned, the questions that were raised applied equally, since the methodology was the same –

A No.

Q – to the '86 and '88?

A Because we weren't discussing the '88 issue.

* * *

Q [161] Okay. Did anything occur between March 22, 1988 and June 16, 1988 that made you believe that the values determined by Mr. Hastings, in fact, were not unjustifiably optimistic?

A Quite honestly, you know, beyond this letter – after this letter, I was not terribly involved with the transaction. Ken Buckius was. So I just don't know.

Q Why did Ken Buckius step in after this letter, do you know?

MR. CHASE: Object on the grounds of foundation.

A I went to Ken. I needed some help with this deal. It was becoming very complicated, very time consuming. And I couldn't handle it alone.

Q (BY MR. NETZORG) Okay.

A I asked Ken to step in.

* * *

Q [180] Then he says, "We shall be adding some additional ground as described in the appraisal which you will be receiving. We are ready to immediately make these additions," et cetera.

And did you believe that Mr. – or did you believe, as a result of having read Mr. Timm's letter, that yes, in fact, it was necessary to add new land to the '86 lien?

A [180] As I told you before, there had been discussions about whether or not the computations were correctly done.

Q Yes.

A And the – apparently, at this point in time, it was believed that land would have to be added.

Q And you didn't have any reason to doubt Mr. Timm if Mr. Timm himself thought that land had to be added, right?

A That's correct.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 89-F-1250

FIRST INTERSTATE BANK OF DENVER, N.A., and JACK K. NABER,

Plaintiffs,

vs.

KIRCHNER MOORE & COMPANY, et al.,

Defendants.

AFFIDAVIT OF KENNETH B. BUCKIUS

STATE OF COLORADO)
CITY AND) ss.
COUNTY OF DENVER)

I, Kenneth B. Buckius, hereby depose and state as follows:

1. I am the Manager of the Corporate Trust Department of Central Bank of Denver ("Central Bank") and have held that position since January 1986.

2. Central Bank acted as Indenture Trustee for two tax-exempt bond issues relating to Stetson Hills Development near Colorado Springs, Colorado. The first was $15,000,000 of bonds issued in December, 1986 ("1986 Bonds"). The second was $11,000,000 of bonds issued in June, 1988 ("1988 Bonds").

3. On June 15, 1988, Central Bank executed an Indenture of Trust ("Indenture") specifying the duties and rights of the trustee.

4. Sometime after January 4, 1988, Central Bank received an appraisal (dated January 4, 1988) performed by Joseph L. Hastings which combined properties securing the 1986 Bonds and properties proposed to secure the 1988 Bonds. At our request, Hastings separated the appraisals which Central Bank received in the first week of February, 1988.

5. Prior to becoming trustee on the 1988 Bonds, certain objective concerns relating to an appraisal performed by Hastings relating to property securing the 1986 Bonds were brought to Central Bank's attention by John Conrad of Dain Bosworth, Inc., the senior underwriter on the 1986 Bonds. Specifically, Mr. Conrad questioned whether the comparables used by Hastings were of recent enough vintage to make his values reliable. As a result, Central Bank had its in-house appraiser, Ed Elmer, perform a summary review of the appraisal. Mr. Elmer also had concerns relating to the comparables and questioned whether Hastings had followed the bulk sale methodology in a forced sale context as prescribed in the Indenture.

6. Thereafter, Cheryl Crandall, the trust officer responsible for Central Bank's duties relating to the 1986 Bonds, sent a letter dated March 22, 1988 to Greg Timm, a representative to the Stetson Hills Authority, setting forth the objective concerns relating to the appraisal and requesting that an independent review of the appraisal be performed.

7. On March 31, 1988, I met with Greg Timm, as well as Steve Jeffers and Will Douglas, representatives of Kirchner Moore & Company, the senior underwriter in the proposed 1988 Bonds. At the meeting, Timm informed me that Hastings had reviewed recent comparables and that they were in conformance with the values in the appraisal. Also, I was informed that Hastings had followed the prescribed bulk sale methodology in a forced sale context. Timm offered to obtain a letter or certifications from Hastings answering these concerns which would be satisfactory to the Bank. Finally, Timm suggested that a new appraisal would be performed by another appraiser by year end.

8. On or about April 5, 1988, the corporate trust committee of Central Bank met and discussed the Bank's original demand for an independent review of the Hastings appraisal, as well as Timm's proposal. The committee accepted Timm's proposal which I communicated by my letter of April 8, 1988. Based upon certifications by Hastings, an MAI appraiser accepted by Central Bank, Central Bank's objective concerns relating to the Hastings appraisal were resolved to its satisfaction.

9. On May 13, 1988, Central Bank executed a letter agreement with the Authority and the Developer which required that an appraisal be provided to Central Bank on an annual basis by Zaleski & Associates or another qualified appraiser acceptable to Central Bank related to the 1986 Bonds and the proposed 1988 Bonds.

10. In carrying out its duties of authenticating and delivering the 1988 bonds, Central Bank relied upon the Hastings appraisal relating to property securing those

bonds and certifications by Hastings concerning his review of recent comparables and the use of the bulk sale methodology, as well as certifications by the Authority and Developer concerning compliance with the 110% Test and 160% test and the proper use of proceeds. Central Bank considered that evidence to be satisfactory and the documents genuinely correct and to have been signed and sent by the proper persons as required by the Indenture. Thereafter, on June 16, 1988, Central Bank delivered the bonds as required by the Indenture.

11. Central Bank did not participate in the preparation of the preliminary or final official statements ("Official Statements") relating to the 1988 Bonds nor were representatives of Central Bank in attendance at drafting sessions concerning the Official Statements. Central Bank received drafts of the Official Statements but reviewed them only to assure that its name was properly stated.

12. Further, the affiant sayeth not.

/s/ Kenneth B. Buckius
Kenneth B. Buckius

Subscribed and sworn to before me this 31st day of May, 1990.

WITNESS my hand and official seal.

/s/ Diane S. Filing
Notary Public

My commission expires:

12-8-93

[SEAL]

(LOGO) Central Bank
Denver

October 22, 1987

Phone #893-3456

Gregory D. Timm
Stetson Hills
5455 No. Union Boulevard
Colorado Springs, CO 80918

RE: Stetson Hills Public Building Authority
Landowner Assessment Lien Bonds Series 1986A
Account Number 80-5021

Dear Greg:

As you may realize, we are soon approaching the anniversary date of the issue of the above Bonds. Certain items are required to be provided to the Trustee on an annual basis. This letter is to assist you in identifying those items which must be provided, and to give you sufficient advance reminder of them so that these items will be received by the Trustee in a timely manner.

The following are to be provided within 120 days of the end of the Company's fiscal year:

1. The Company's audit report and accompanying financial statements.
2. An independent public accountant's certificate concerning the required distributions of profits and earnings.

These items have not yet been received by the Trustee for fiscal year 1986.

The following items are to be provided at least annually, and will therefore need to be in the possession of the Trustee prior to the end of calendar year 1987:

1. The Company's certification with respect to its compliance with all covenants under the Development Agreement and the Public Improvements Assessment and Lien.

2. The Company's certification setting forth the total number of parcels sold during the preceding year that were subject to the Lien, and the aggregate sales price received.

3. The Company's certification regarding an examination of the real property records of El Paso County containing the required information with respect to the payment of taxes and assessments, those that are due, and any delinquencies.

4. The Company's instructions to the Trustee for any required Rebate Deposit with the accompanying CPA report.

5. A Qualified Appraisal Report, as that term is defined in the Indenture, to provide satisfactory evidence to the Trustee that the 160% Test is being met. This report must have been prepared by a Qualified Appraiser within the previous three months. This report will be required prior to any further releases of property from the Lien by the Trustee.

Please refer to Section 5.3 of the Development Agreement and Section 5.11 of the Indenture for the specific requirements concerning all of the above items.

Please let me know if you have any questions in this regard or if I may be of any assistance.

Thank you for your cooperation and attention to this matter.

Cordially,

/s/ Cherry Crandall
CHERYL A. CRANDALL
Corporate Trust Officer

jj

cc: John Conrad, Dain Bosworth

(LOGO) **Central Bank**
Denver

December 10, 1987

Greg Timm
Stetson Hills
5455 North Union Boulevard
Colorado Springs, CO 80918

RE: Stetson Hills PBA
Account Number 80-5021

Dear Greg:

This will confirm our telephone conversation today regarding the Capitol Federal certificate maturities in the Bond and Reserve Funds, and the December 30 debt service payment.

The Capitol Federal maturities are in the amounts of $34,823.08 and $735,153.98 for the Bond and Reserve Funds, respectively.

There is currently $80,458.72 available in the Reserve Fund in excess of the requirement. This amount has been

transferred to the Bond Fund, and results in a new available balance totalling $118,247.58.

The principal and interest payment due on December 30 is $654,875.00. Unless a prepayment is received prior to December 30 in the amount of $536,627.42, such amount will be transferred from the Reserve Fund to the Bond Fund on that date. In the event that such transfer is made, you will be required to replenish the Reserve Fund within 60 days.

In accordance with your instructions, the funds received from the investment maturities today have been invested in the SEI Repo, and will remain so invested until applied to debt service or until you have provided further written instructions.

Additionally, my records indicate that the policy for general liability insurance has expired today. Please advise as to the status of a renewal policy.

Please also advise with respect to the status of the items requested in my letter of October 22. I understand that a new appraisal will be available sometime in January. We have also received the copies of your annual report.

Please let me know if you have any questions.

Best wishes for a happy holiday season.

Cordially,

/s/ Cherry
CHERYL A. CRANDALL
Corporate Trust Officer

jj

Jeffers
DEPOSITION EXHIBIT 61
11-29-89
AGREN, BLANDO & ASSOCIATES

Stetson Hills

Dec. 30, 1987

Greg Timm Mark Carlson
Greg Johnson Steven Pastrana

160% Test: presents problems so does not take into acc't the reserve fund

*1) should this be parity debt or not
2) advance refunding
3) reconizing [sic] that we cannot change the existing test – we create a new test which becomes effective when the 1986 bonds get defused (either economically or through an advance refunding)

– Greg T – Non parity debt – we will discuss it internally

– Will any bond proceeds be used for sites previously benefitted [sic]?
yes

– talk to Hastings & Buckius about need for appraisal or whatever to support the 160% test certification

– closing no later than Feb. 20 preferably early Feb.

– Appraisal s/b done w/i 1 1/2 wks. do summaries

– sales schedule ASAP – Tuesday

– one other time constraint: January 19th start of Writer lawsuit

– January 8th Appr., Sales sch., use of proceeds, const. schedule

4th – January 12th new draft of documents, Cash Flows

Exhibit C

- January 15th review session 9:30
- January 19th 2nd Drafts
- January 21 (illegible) Mail
- Marketing — shoot for the 9th but most realistic

February 23rd – City Council Mtg.
Pre-Close 24th — worst case
February 25th Closing

about 170 homes sold
G Timm – set up conference call w/Hastings – Jan. 4

Stetson Hills

1.) are they meeting all requirements w/Trustee?

2.) is the issue sigs going to $11MM and if so when will appraisal be ready

3.) has Timm spoken w/Wilson?

4.) What is projected date for City Council hearing?

5.) Powers has a repurchase agreement w/amount at $9,783/acre whereas projected liens = $38,022/acre and appraisal in excess of $56,864

Ms. Brenda Horn
Ice Miller Donadio & Ryan

Dear Brenda:

Please find enclosed a program description package for presentation to the State Budget Office director, Ken Coby.

Johnson
DEPOSITION EXHIBIT 257
1-24-90 **LO**
AGREN, BLANDO & ASSOCIATES

January 11, 1988

TO: ALL PERSONS ON THE ATTACHED DISTRIBUTION LIST

$10,000,000
THE COLORADO SPRINGS-STETSON HILLS
PUBLIC BUILDING AUTHORITY
Landowner Assessment Lien Bonds
Series 1988A

Ladies and Gentlemen:

Enclosed for your review are initial drafts of an Indenture of Trust, Development Agreement and Public Improvements Assessment and Lien prepared in connection with the above-captioned financing. The enclosed documents have been prepared in the expectation that the Series 1988A Bonds will be issued as a series of Bonds which will be separate from the Series 1986A Bonds previously issued by the Authority. Accordingly, there are no cross-default or cross-collateralization provisions between the two series of Bonds.

We are awaiting receipt of certain additional information from the Company for inclusion in the Official Statement. At such time as the information is received, we will incorporate it into the Official Statement and distribute copies of that document for your review and comment. Our preliminary list of additional information required to complete the initial draft of the Official Statement is set forth below:

1. Copies of the appraisal report for the land to be pledged as security for the Series 1988A Bonds, as well as the appraisal report of the 1986A Bond issue.

2. Unaudited interim financial information concerning the Company and the Authority to supplement the audited financial statements dated December 31, 1986.

3. Copies of existing loan documents with Capital Federal Savings and Loan Association and any other lenders for the Company.

4. A report of sales activity within Stetson Hills since the date of the last Bond issue.

5. A real estate description describing the real estate to be encumbered under the Public Improvements Assessment and Lien, the number of acres to be encumbered, as well as a survey or other site plan identifying the location of that real estate.

6. A preliminary title report or commitment for title insurance with respect to land to be encumbered under the Public Improvements Assessment and Lien.

7. A map or other diagram identifying the type and location of the public improvements to be encumbered under the Public Improvements Assessment and Lien.

8. The information previously identified as required from the Company to complete various blanks in the Official Statement.

We look forward to receiving the foregoing items of information, as well as any comments you may have concerning the documents, at your earliest convenience.

Yours sincerely,

Gregory V. Johnson

kjp

Enclosures

$10,000,000
THE COLORADO SPRINGS-STETSON HILLS
PUBLIC BUILDING AUTHORITY
Landowner Assessment Lien Bonds
Series 1988A

DISTRIBUTION LIST

Gregory D. Timm, Esq.
Mr. Marc A. Camirand
Stetson Hills
By AmWest Development Corporation
5455 North Union Boulevard
Colorado Springs, CO 80918

Mr. Steven D. Jeffers
Mr. William C. Douglas, Jr.
Kirchner Moore & Company
Suite 2700
717 17th Street
Denver, Colorado 80202

Mr. Kenneth B. Buckius
Central Bank of Denver
Tower 3, 5th Floor
1515 Arapahoe Street
Denver, CO 80202

Gregory V. Johnson, Esq.
R. Steven Pastrana, Esq.
Kutak Rock & Campbell
2400 ARCO Tower
707 17th Street
Denver, CO 80202

Jeffers
DEPOSITION EXHIBIT 64
11-29-89
AGREN, BLANDO & ASSOCIATES

(LOGO)
DAIN
BOSWORTH
INCORPORATED
INTER-REGIONAL FINANCIAL
GROUP

January 25, 1988

Ms. Cherry Crandall
Corporate Trust Department
Central Bank of Denver
5th Floor
1515 Arapahoe Street
Denver, Colorado 80202

RE: Stetson Hills Public
Building Authority

Dear Cherry:

You have advised us, as senior manager on a $15,000,000 issue for the above issuer, that the Authority did not make its interest payment on December 30, 1987 and that you, acting in your capacity as Trustee, used

Bond Reserve monies to make the payment to bondholders. You have further advised us that during the course of 1987, you released certain parcels of property from the Lien of the Indenture, based on certifications from one Greg Timm that the Authority was in compliance with its Bond Covenants. Computer reports from you, as Trustee, show that as of December 31, 1987, the Authority had no funds on deposit in the Bond Fund.

This is a complicated transaction. As you know, the two most important covenants are the 110% Test and the 160% Test. For the 160% Test we must rely on the appraisal which is now approximately 16 months old. However, the 110% Test is a cash flow test that can easily be checked. It appears as though the Stetson Hills Public Building Authority has not met the 110% Test since June of 1987, because property has not been added to the Lien of the Indenture. The 160% Test is probably not being met for the same reason.

Enclosed please find a copy of the project analysis which was done just prior to closing to satisfy Bond Counsel and Disclosure Counsel that the 110% Test was being met. You will note on page 8, that in order to meet the 110% Test in 1987, either $3,854,865.00 of assessments should have been paid or land with sufficient value should have been added to the collateral. We are of the understanding, based on discussions with you, that neither occurred.

You will note on pages 2 and 3 that the following assessment rates are required to be in place on the various categories of land subject to the Lien of Indenture:

Non-Residential (P.I.P.)	$ 81,790
Non-Residential (P.S.C.)	133,412
Single Family (R-1-6000)	22,347
Multi-family (P.U.D.)	597,192

We assume that you have checked the collateral to satisfy yourself that the recorded assessment liens have been correctly stated.

The fact that property was released from the Lien of the Indenture without the appropriate amounts being placed in the Bond Fund would suggest that you may have been given false or misleading certifications.

At this date we are operating on an appraisal that is over 16 months old. In light of the declining property values in Colorado Springs and the foreclosure sales, many of which have occurred within the vicinity of the collateral, an appraisal that reflects property values similar to those utilized for the 1986 appraisal of record should be suspect and not relied on without further independent check. As Trustee, you have the authority to name an independent appraisal if you are not satisfied.

It appears that the officers of the Stetson Hills Building Authority have failed to conform to the Bond Covenants to which they agreed. In the interest of the bondholders I call upon you to the enforce the covenants or Invoke the Remedies. It is our opinion that, based on your statement to us and based on the project analysis, in addition to a reserve fund deficiency the Stetson Hills

Public Building Authority is not meeting either the 110% or the 160% Test.

Respectfully submitted,

DAIN BOSWORTH INCORPORATED

/s/ JC
John E. Conrad
Senior Vice President

cc: James H.B. Wilson
Marshall Crawford (Smith Barney-Denver)
Greg Johnson (Kutak)
Arlene Bobrow (Sherman & Howard)
Will Dougls [sic] (Kirchner)

OVERSIZE FOLDOUT(S) FOUND HERE IN THE PRINTED EDITION OF THIS VOLUME ARE FOUND FOLLOWING THE LAST PAGE OF TEXT IN THIS MICROFICHE EDITION.

SEE FOLDOUT NO 1-9

Jeffers
DEPOSITION EXHIBIT 65
11-29-89
AGREN, BLANDO & ASSOCIATES

(LOGO)
STETSON HILLS
5455 North Union Blvd.
Colorado Springs, CO 80918
(303) 528-1808

January 27, 1988

Ms. Cheryl Crandall
Corporate Trust Department
Central Bank of Denver
5th Floor
1515 Arapahoe Street
Denver, Colorado 80202

RE: Stetson Hills Public Building Authority: John Conrad Letter of January 25, 1988

Dear Cherry:

I have recently received a copy of John Conrad's letter discrediting the appraisal and our assessment computations. As you are aware, we have undertaken a new summary appraisal for the $15,000,000 Bond Issue. This appraisal was recently completed and is being Federal Expressed for your review. We shall be adding some additional ground as described in the appraisal which you will be receiving. We are ready to immediately make these additions which shall more than correct any concerns that Mr. Conrad has expressed. We also shall be making the bond reserve payment next week. These items shall more than correct Mr. Conrad's concerns which are

evidently the result of his inability to understand the provisions of this transaction.

Mr. Conrad specifically told me to feel free to use the reserve accounts and also discussed the total status of the Bond Issue approximately 30 days ago; he expressed no concerns to me at this time and furthermore said he was extremely confident in this Bond Issue. Since this time he has been informed that he is not going to be involved with our second Bond Issue. For this reason, I feel he has decided to cast unfounded claims against my credibility and that of our company. I would suggest that we meet next week to discuss these issues after you have had a chance to review the appraisal. The appraisal was prepared using the parcels to be included in both Bond Issues. I would respectfully request that we meet on this issue before any notice of default is mailed based on Mr. Conrad's unfounded claims.

Sincerely,

AMWEST DEVELOPMENT CORPORATION

/s/ Gregory D. Timm/jm
Gregory D. Timm
Executive Vice President

GDT:jm

cc: Steve Jeffers, Kirchner
Will Douglas, Kirchner
Marshall Crawford, Smith Barney
John Conrad, Dain Bosworth
Greg Johnson, Kutak

Jeffers
DEPOSITION EXHIBIT 72B
11-30-89 LO
AGREN, BLANDO & ASSOCIATES

717 Seventeenth Street
Suite 2700
Denver, Colorado 80202
303-292-1600

KIRCHNER MOORE & COMPANY
A subsidiary of Drexel Burnham Lambert Incorporated

Investment Bankers

January 28, 1988

Mr. John Conrad
Senior Vice President
Dain Bosworth, Inc.
1225 17th Street, Suite 1800
Denver, CO 80202

Re: Stetson Hills Public Building Authority

Dear John:

We are in receipt of your January 25, 1988, letter to Cherry Crandall at Central Bank of Denver regarding the above captioned district. Let us begin by saying that as co-managers of the 1986 issue, we share your concern that the Authority and the Trustee continually comply with the Bond covenants, and that the security for the Bonds remain intact as provided for by the Bond documents. We would echo your comments that this is indeed a complicated transaction, and that the 110% Test and the 160% Test are two of the most important covenants within the Bond documents.

It is at this juncture, however, that we differ in our analysis of the "facts" as you represent them. Not only do

we disagree with your numbers, but we may be in disagreement with your thought process as well. First, let me discuss your numbers. Specifically, referring to page 8 of the project analysis, you indicate " . . . that in order to meet the 110% Test in 1987, either $3,854,865.00 of assessments should have been paid or land with sufficient value should have been added to the collateral." Your cash flows on page 8 do not support your contentions. If we are analyzing page 8 correctly, the first two columns represent residential assessments and non-residential assessments still outstanding after projected sales for the previous years have occurred. Yearly projected sales are detailed on pages 2 and 3, and pages 6 and 7 specifically identify the value of the collateralized property remaining after these yearly sales. It seems you have erroneously added the first two rows of the column labeled "Total Res. Asmts. Due" on page 8 (which total $3,858,866.00) and identified this as assessments that should have been paid in 1987. In point of fact, as of December 30, 1987, the figures on page 8 of $1,547,564 of residential assessments and $10,742,833 of non-residential assessments were amounts projected to be outstanding and remaining as collateral. The correct analysis of assessments which were projected to be collected during 1987 is shown on page 5, by adding the first two rows of the first column entitled "Assessments Paid In." This amount which equals $3,681,082. [sic] Had these assessments been paid during 1987, 31.9 acres of single family residential (R-1-6000), 29.5 acres of multi-family residential (PUD), 21.1 acres of non-residential (PIP), and 4.7 acres of non-residential (PBC) would have been released as collateral by the Trustee.

As for our disagreement with your thought process (and assuming your numbers had been correct), you state that had the Trustee not received $3,854,865.00 from assessments being paid, that land with a sufficient value should have been added as collateral. The insinuation seems to be that a significant amount of additional land would be required to be added in lieu of cash in order to be in compliance with the 110% Test. Even with no land sales occurring, assuming the developer only prepays assessments adequate enough to fund debt service (and receives releases for land based on the assessment amounts prepaid), it is our belief that very little land needs to be added to maintain the 110% Test. In fact, since on the date of Bond closing the 110% Test produced a ratio of 118%, it is our contention based upon cash flows we've run that as of year end, (and assuming the reserve fund were replenished [sic] by the Developer within the allowable 60 days) the 110% Test is met. If you're suggesting any additional land would be required, we disagree with your thinking.

Further, you indicate that pages 2 and 3 of your project analysis require certain assessment rates to be in place. We specifically disagree with your value for multi-family (PUD), and believe the value (according to your project analysis) should be $32,403 per acre, not $597,192 per acre. Moreover, we generally disagree with your project analysis in figuring the Interest Component on the unpaid Allocated Assessment Charges (i.e. the columns your project analysis refers to as "Assessment Rate"). The Bond documents call for interest to be figured on a simple interest basis at the highest interest rate borne by the Bonds (i.e. 9.00%). Your analysis uses an interest rate of

9.25%, and compounds the interest component. Although the higher rate and compounding have little effect in the early years of the project analysis, they have a substantial impact in the later years.

A few final comments seem appropriate. We would not argue that the original appraisal is now somewhat stale, and that a current update would be prudent. A new appraisal has in fact been completed, and at this time should be in the hands of the Trustee. Some delay in the preparation of the updated appraisal can be directly attributable to enlarging the scope of the appraisal to encompass the proposed new bond issue. However, since it was always the intent of the Authority to provide yearly updates of the appraisal on a calendar year basis, we do not feel that a 30 day delay is unreasonable. With the new appraisal, the Trustee will be able to verify the 160% Test, and in the event the Authority is not in compliance, additional collateral will be added as evidenced by Greg Timm's January 27, 1988, letter to Cherry Crandall.

You suggest that property was released from the Lien of the Indenture without appropriate amounts being placed in the Bond Fund, accusing the Authority of giving false or misleading certifications to the Trustee. You further suggest, based upon what appears to be both a faulty project analysis as well as a misreading of data within the analysis, that the Authority is not in compliance with the Bond covenants. I believe you have done an injustice to the Authority, the Developer and the Trustee by making these accusations without a more careful review of the facts. Even if you were confident that your facts and numbers were correct, it seems to me a meeting

with the parties involved would have been preferable, prior to written correspondence. Furthermore, it seems advisable to copy the Authority with your correspondence with the Trustee, since in fact it is the Authority you are targeting as being out of compliance with the Bond documents.

We would strongly suggest a meeting be held with you, ourselves, the Trustee, and if necessary, the Authority or Developer at the earliest possible time to review your and our contentions and see if we can rectify the situation without further barrages of letters being sent to interested but not directly involved parties. We will call you tomorrow to try to arrange such a meeting.

Sincerely,

KIRCHNER MOORE &
COMPANY
/s/ Steven D. Jeffers
Steven D. Jeffers
Vice President
/s/ William C. Douglas, Jr.
William C. Douglas, Jr.
Vice President

SDJ/WCD:bjk

cc: Greg Timm
James H.B. Wilson
Cherry Crandall
Marshall Crawford
Greg Johnson
Arlene Bobrow

Jeffers
DEPOSITION EXHIBIT
12-1-89

AGREN, BLANDO & ASSOCIATES

Steven D. Jeffers
Vice President
Public Finance

717 Seventeenth Street
Suite 2700
Denver, Colorado 80202
303-292-1600

KIRCHNER MOORE & COMPANY
A Subsidiary of Drexel Burnham Lambert Incorporated

Investment Bankers

February 10, 1988

Greg Timm
Mark Camerand
AmWest Development Corporation
5455 N. Union Blvd.
Colorado Springs, CO 80918

Greg Johnson
Steve Pastrana
Kutak, Rock & Campbell
2400 Arco Tower
707 17th Street
Denver, CO 80202

Gentlemen:

This letter will summarize the time schedule of events and person(s) responsible for completing the tasks outlined during our meeting last Wednesday night.

Exhibit E

Date	Event	Person Responsible
Early the Week of 2/8	Sales projection information to be distributed to Kutak & Kirchner	Mark Camerand
Week of 2/8	Revised appraisal completed and distributed	Greg Timm
2/10	Meeting with Trustee, Kutak, AmWest, Kirchner to discuss compliance on 1986 Bond issue	All
2/15	1988 Financial Statement of AmWest completed	Greg Timm
Week of 2/15	Cash flows completed	Steve Jeffers
Week of 2/15	Preliminary Official Statements distributed	Kutak
Week of 2/22	Meeting with Jim Wilson, AmWest, Kirchner, Kutak	Steve Jeffers
Week of 2/22	Meeting with Kirchner Moore commitment committee. Meeting with Smith Barney regarding participation in 1988 issue.	Steve Jeffers

Please let me know if any of you find any discrepancy between this schedule and what we discussed at our meetings.

Sincerely,

KIRCHNER MOORE &
COMPANY

/s/ Steven D. Jeffers
Steven D. Jeffers

SDJ:bjk

cc: Will Douglas

Jeffers
DEPOSITION EXHIBIT 69
11-29-89
AGREN, BLANDO & ASSOCIATES

(LOGO)
DAIN
BOSWORTH
INCORPORATED
INTER-REGIONAL FINANCIAL
GROUP

February 22, 1988

Ms. Cherry Crandall
Corporate Trust Officer
Central Bank of Denver
1515 Arapahoe Street
Denver, Colorado 80292

Re: Stetson Hills Public Building Authority

Exhibit H

Dear Cherry:

We have reviewed the appraisal, which you so graciously supplied us, and I have made comments relative to the methodology and selection of comparables. These comments are included herein.

I have also computed the tests, based on the appraisal. There are two areas I want to point out. 1) In computing the interest component of the allocated assessment charges, I have computed interest at "simple" from the original bond closing date on all parcels. On the R & D parcel, which is a new parcel, if interest was computed from the date the parcel was added, the 160% test would be higher. However, the 110% test would be lower. Under the documents, when property is substituted the interest component is computed from the original closing date. When property is added, however, the documents are silent and I think it could be presumed that interest begins to accrue when the property is added.

2) The 110% test was designed as an end of period test (i.e. on interest payment date). Consequently, in the 110% test, accrued interest on the outstanding bond principal should be added to the denominator when making the test intra-period.

It is comforting to know that your real estate people are assisting you in evaluating the appraisal. We appreciate your efforts on behalf of the underwriters and the bond holders.

Yours very truly,

DAIN BOSWORTH
INCORPORATED

/s/ JC
John Conrad

17TH STREET PLAZA BUILDING/SUITE 1800/1225
17TH STREET/DENVER, COLORADO 80202-5599

(303) 294-7200

STETSON HILLS PUBLIC BUILDING AUTHORITY

Observation of appraisal done for Greg Timm, Am West Development, dated January 4, 1988

PBC Zone Land

* Cannot believe that appraiser could not find comparable sales more recent than 1985 and 1986 when there were several foreclosure sales in 1987. Using comparables that are tied to a more upbeat market, tends to overstate the current value of the PBC Collateral. Even using the 1985 and 1986 comparables, it is hard to see how Hastings could have arrived at a $5.00 per square foot current value for the PBC property (see Table 7.1 and 7.2) for Parcel 6033; (Table 7.3 for Parcel 5053);

PIP Zone Land

* Same comment applies to PIP comparable sales. The most recent comparable sale of 7/9/86 just seems incomprehensible in view of the foreclosure sales in 1987. The PIP value selected for Parcel 6045 is, however, substantially below the comparable values used for the comparison (see Table 8.1 and 8.2).

PUD Zoned Land

* Most recent comparable is 1/2/87 with the next oldest 5/6/86. These are, in our opinion, just too old to be of any use in this appraisal. Everyone knows that multi-family land is not moving in Colorado Springs (see Table 9.1 and 9.2).

R-1-6000 Zone Land

* I don't understand why the appraiser did not use sales of residential property in the subject area to Nash Phillips Copus and North American Homes to establish valuation basis. Even though these sales were, on average, $2-3,000 below the value per lot that Hastings has used, they would lead one to believe that this is more reflective of the value that the bondholder could expect. In the 1986 appraisal, Hastings assigned a value of $0.80/square foot to Parcel 6043 as partially developed (see Table 12). In the 1988 appraisal, the value increases to $1.00/square foot. No reason is given for the 25% increase in value and there is no indiction as to whether the property is partially or totally developed. In addition, the appraiser seems to value gross acres even through some of the acreage will be dedicated to streets.

* Hastings states on page 36 (latest appraisal) that he is in accord with the Absorption Analysis of Research and Consulting Group (Exhibit 10) that is dated May 1987. Dave Bamberger of Research and Consulting Group says that study is dated and may not be reflective of current environment.

It just seems that Hasting is relying on old data and his appraisal may not be reflective of the current environment.

Filing 12-13-14 were made in 1986 and were improved when bonds were issued according the Metex Study (Exhibit 6).

Stetson Hills Public Building Authority

Computed as of 3-1-89

160% Test = Appraised Value / (Allocated Assessment + Reserve + [illegible]) = 27,751,049.00 / 17,329,557.07 = 1.53

Parcels	Acreage	Principal Component	Interest Component	Total
6033	3.10	1,122,116 –	929,090.35	1,208,43[illegible].35
6091	27.43	1,122,116 –	370,541.71	3,495,531.41
5033	4.09	1,122,116 –	55,151.71	549,400.35
5098	3.95	1,122,116 –	53,903.53	532,241.70
6095	41.98	79,945 –	5,105,393.93	5,180,441.59
R&D	18.32	79,865.00	1,53[illegible],248.12	1,529,[illegible].92
6098	12.49	27,440 –	91,543.79	913,500.21
5051	20.31	27,440 –	62,902.15	579,[illegible].60
F 5520 (6098)	4.91	20,955 –	15,944.61	159,[illegible].16
F 5009 (6098)	16.0	20,955 –	36,573.59	343,[illegible].35
F 5008 (6098)	18.19	20,955 –	93,928.19	127,013.05
F 5007 (6099)	9.77	20,955 –	16,903.99	102,[illegible]
				17,929,557.07

* Interest Component computed at 9% simple interest from 12-30-86 to [illegible] (1.[illegible] years) = [illegible]

110% Test = Allocated Assessment charge / Bond Principal − (Reserve Fund + Bond Fund + Bond Cost Fund)

= 17,929,557.07 / 915,000,000 − 1,[illegible]

= 17,929,557.07 / 13,540,150 = 1.32

Reserve Fund Requirement as of January 1, 1988 should be [illegible].

* If the denominator for the 110% test is reduced for the [illegible] of the Bonds of $ 219,39[illegible], the 110% test is 1.30

DEPOSITION EXHIBIT 258
1-24-90 LO
AGREN, BLANDO & ASSOCIATES

KUTAK ROCK & CAMPBELL
A Partnership
Including Professional Corporations
2400 ARCO Tower – 707 17th Street
Denver, Colorado 80202

(303) 297-2400

Atlanta
New York
Omaha
Washington

February 26, 1988

TO: ALL PERSONS ON THE ATTACHED DISTRIBUTION LIST

$10,000,000
THE COLORADO SPRINGS-STETSON HILLS
PUBLIC BUILDING AUTHORITY
Landowner Assessment Lien Bonds
Series 1988A

Ladies and Gentlemen:

Enclosed is a form of Preliminary Official Statement for the above-captioned financing. That Official Statement reflects most of the information we have received to date with regard to the Company and the Development.

At various places in the document, there are statements with regard to the status of the Development and the Company which refer to dates which are two or three months old. In many cases, that information is stated to be current as of December of 1987. Prior to mailing the

Preliminary Official Statement for the transaction, the appropriate representative of the Company should review those sections of the Preliminary Official Statement which concern the Company and the Development in order that the information can be updated to a date which is relatively current as of the time of the mailing of the Preliminary Official Statement.

One of the areas which may require further examination is the information in the Official Statement concerning lot sales. The figures we have received from the Company indicate that the Company has closed approximately 383 residential lots within the Development, and that an additional 380 lots are under contract for sales for home builders. The lot sales contracts which we have received to date from the Company indicate as follows: (a) 134 lots were required to be purchased by North American Homes from the Company pursuant to two separate lot purchase contracts, 66 of which were required to be purchased by September 1, 1987 and 68 of which were required to be purchased by March 1, 1988; (b) 29 residential lots were required to be purchased by Richmond Homes prior to February 10, 1988, pursuant to a contract dated July 10, 1987; (c) 109 lots were required to be purchased from Nash Phillips Copus pursuant to a contract dated October 22, 1986; and (d) approximately 101 lots were required to be purchased by Coventry pursuant to a contract dated July 14, 1986, as subsequently amended on September 12, 1986 and November 17, 1986.

The total lot sales contemplated by the contracts described above are 373, which amount is considerably less than the lot sales figures which appear in the Official

Statement. We understand from Greg Timm that Coventry is currently in default in its contract with the Company and has purchased less than all of the 101 lots contemplated by its contract. Given the bankruptcy of Nash Phillips Copus, we presume that less than the 109 single family lots required to be purchased by Nash Phillips Copus have, in fact, been bought.

The foregoing figures concerning lot sales lead us to believe that there are additional contracts for the sale of residential lots which have not been provided. In order to complete our due diligence on the Official Statement, we ask that copies of the additional lot purchase contracts be provided to us at the earliest convenience.

We look forward to receiving your comments and suggestions concerning the enclosed document. Additional changes are likely to be made in the document upon receipt of the audit report for the Company and final information concerning the property to be encumbered under the 1986 and 1988 Bond issues, as well as the appraisals for those properties.

Yours sincerely,

/s/ Gregory V. Johnson
Gregory V. Johnson

kjp

Enclosure

$10,000,000
THE COLORADO SPRINGS-STETSON HILLS
PUBLIC BUILDING AUTHORITY
Landowner Assessment Lien Bonds
Series 1988A

DISTRIBUTION LIST

Gregory D. Timm, Esq.
Mr. Marc A. Camirand
Stetson Hills
By AmWest Development Corporation
5455 North Union Boulevard
Colorado Springs, CO 80918

Mr. Steven D. Jeffers
Mr. William C. Douglas, Jr.
Kirchner Moore & Company
Suite 2700
717 17th Street
Denver, Colorado 80202

Ms. Cheryl A. Crandall
Central Bank of Denver
Tower 3, 5th Floor
1515 Arapahoe Street
Denver, CO 80202

Mark E. Winslow, Esq.
Sparks, Dix, Enoch, Suthers & Winslow, P.C.
128 South Tejon
Post Office Box 1678
Colorado Springs, CO 80903

Gregory V. Johnson, Esq.
R. Steven Pastrana, Esq.
Kutak Rock & Campbell
2400 ARCO Tower
707 17th Street
Denver, CO 80202

Stetson Hills Value Comparison

Parcel	1986 Appraised Time Discounted Value In Original Appraisal	1988 Appraised Time Discounted Value In Current Appraisal
6045	8,100,000	6,593,846
6033	6,752,000	6,752,000
5098	860,000	860,000
5053	880,000	880,000
6041	5,922,000	5,922,000
6047	1,813,000	1,436,033
6044	229,000	206,157 *
6043	1,703,000	1,206,794 *
6048	601,000	584,588
5051	1,016,000	785,400
Total Value of Collateral	27,876,000	25,226,818
Debt Principal Outstanding	15,000,000	15,000,000
Ratio: Value to Debt	1.86x	1.68x

* Not separately appraised – based upon per acre value from appraisal as of Jan. 4, 1988 for R-1-6000 zoning and removes 24 acres valued at $29,660/acre previously released in July 1987.

Jeffers
DEPOSITION EXHIBIT 72
11-29-89 LD
AGREN, BLANDO & ASSOCIATES

(LOGO) **Central Bank**
Denver

March 22, 1988

Greg Timm
Stetson Hills
5455 N. Union Boulevard
Colorado Springs, CO 80918

RE: Stetson Hills PBA Landowner Assessment
Lien Bonds Series 1986A
Account Number 80-5021

Dear Gregg:

We have completed our review of the Appraisal dated January 4, 1988, prepared by Joseph L. Hastings. As you know, we have also had the appraisal reviewed by Ed Elmer of our lending area, who we consider to be our resident expert on the subject of real estate appraisal. In connection with Mr. Elmer's review, he has spoken directly with Mr. Hastings by telephone regarding certain issues.

Based upon our review, and the recommendation given us by Mr. Elmer, we will require, in our capacity as Trustee, that an independent review of the appraisal be conducted by a different appraiser, which may be selected subject to our approval. It is our preference that Zaleski & Associates be engaged if possible for this purpose.

We are requiring that an independent review of the appraisal be conducted for the following reasons:

1. The age of the comparable sales data makes it of questionable use as a valid basis for valuation. We question why more recent sales were not utilized for this purpose.

2. Mr. Hastings has confirmed that his discounting methods did not consider a bulk sale in a forced liquidation context, as is specifically required by the Indenture.

3. Based on our review and investigation, the values determined by the appraisal appear to be unjustifiably optimistic, given the current economic conditions in the residential and commercial real estate markets in El Paso County.

Please let me know if you have any further questions regarding this matter.

Cordially,

/s/ Cherry Crandall
CHERYL A. CRANDALL
Corporate Trust Officer

cc: Gregory V. Johnson, Kutak Rock & Campbell
John Conrad, Dain Bosworth
Steven D. Jeffers, Kirchner Moore

jj

1515 Arapahoe Street/Denver, Colorado 80292/
(303) 893-3456

Jeffers
DEPOSITION EXHIBIT 74
11-29-89 LO
AGREN, BLANDO & ASSOCIATES

Stetson Hills – Greg Timm March 31

Ken Buckius, Steve

1) Chain of Events. –

2) Now in compliance – supposedly in position of needing new appraisal – spent $14,000 on appraisals

Greg's offer: will use Jerry Zaleski instead of Hastings at the end of the year upon Cervasis request

Our position is that the methodology is in compliance w/requirements of legal documents

-need letters from Hastings

-need to adjust the ratios
1986 issue

1) bring $2M new land in
2) recalculate assessments
3) get certifications from Gary Johnson & Powers
4) get contract letter from Central
5) go to city

– Need to get Ken to go to Trust Committee to buy off on Greg's offer then have him give summary of time required for [sic] to Ken & Greg on Tuesday.

Jeffers
DEPOSITION EXHIBIT 74A
11-30-89 LO
AGREN, BLANDO & ASSOCIATES

3/31/88
Stetson Hills –
Greg Timm, Will Douglas, Steve Jeffers & KB

– GT – willing to put up additional ground; $2 million – doesn't want to do new appraisal & willing to ask – Zaleski to do appraisal at end of the calendar year. – did take into consideration bulk sales – w/Hastings appraisal

a) Jeffers believes that bulk sales were treated w/in methodology of the bulk sales.

Comparables → many recent sales have been lender foreclosures & Hastings did consider the end of year sales to make sure they are in conformance.

* – draft letter to see if Hastings can live w/it.

Call Steve Wednesday.

Cert of KRC (& their attys.) & RMConnections.

Ratios by CPA on new deal

Verification that considered reasonableness of app.

Dec. 10, 1988 → before 12/1 preferable

Committee dec: → Dec. review of the situation.

6 to OK compromise

Exhibit L

Jeffers
DEPOSITION EXHIBIT 75
11-29-89
AGREN, BLANDO & ASSOCIATES

(LOGO) **Central Bank**
Denver

April 8, 1988

RE: Stetson Hills PBA Landowner Assessment Lien Bonds
Series 1986A
Account No. 80-5021

Dear Greg:

Our corporate trust committee has reviewed the proposal you presented to Steve Jeffers, Will Douglas and myself on March 31, 1988 which proposal was in response to our letter of March 22, 1988 concerning the Hastings appraisal.

Our understanding of the details of the proposal is as follows:

1. The current Hastings appraisal will be used but it will be supplemented by a letter from Mr. Hastings which pertains to our concerns upon review of the appraisal relating to non-use of recent comparables and the bulk sale in a forced liquidation discounting methodology utilized.
2. That a new appraisal will be provided to us by December 10, 1988 and be performed by Zaleski & Associates.
3. Additional property will be subjected to the Assessment Lien. The additional property has an approximate value of $2 million. This will be done in order to allow the Allocated Assessment Charge to be reduced

and bring the 110% Test and 160% Test into compliance.

4. All provisions of Section 5.3 of the Public Improvements Assessment and Lien would need to be satisfied including the title insurance requirement.
5. Certificate of the Company's attorney relating to the calculation of the 110% and 160% Tests.

It should be noted that copies of all documents presented to the Trustee by a Property Owner must be provided to the Original Purchasers under Section 7.1 of the Public Improvements Assessment and Lien.

The committee believes that the proposal is reasonable and would find that the requirements of the bonds have been complied with upon our receipt and satisfaction of the above detailed items in the near future with the exception of Item No. 2. This position is taken with the expectation that a new appraisal by Zaleski and Associates will be delivered in December without waiver or delay.

It should also be recognized that it is likely that we will be requiring annual updates of the appraisal on these types of bond transactions to meet the concerns of the Trust Committee. In addition, when certifications by the Company are made concerning the various Tests, we would request that they be reviewed by their attorneys.

If you would like to discuss these matters or have any questions, please call me.

Very truly yours,

/s/ Ken
KENNETH B. BUCKIUS
Vice President

ds

Enclosures

cc: ✓Steve Jeffers — Kirchner Moore & Company
717 17th Street
Suite 2700
Denver, CO 80202

Greg Johnson — Kutak Rock & Campbell
2400 Arco Tower
707 17th Street
Denver, CO 80202

1515 Arapahoe Street/Denver, Colorado 80292/
(303) 893-3456

DRAFT CERTIFICATE

This certificate is rendered on behalf of Joseph L. Hastings Company (the "Appraiser") in connection with the issuance of an appraisal report dated ___, 1988 (the "Appraisal") of selected parcels of property from the Stetson Hills Master Plan located Northeasterly of Powers Boulevard and Barnes Road in the City of Colorado Springs, Colorado. The Appraisal has been issued by the Appraiser for the benefit of Amwest Development I, Limited Partnership (the "Company"). The Company participated in the issuance of $15,000,000 in aggregate

principal amount of Landowner Assessment Lien Bonds, Series 1986A issued by The Colorado Springs – Stetson Hills Public Building Authority (the Authority") pursuant to the Indenture of Trust dated December 1, 1986 (the "Indenture") between the Authority and Central Bank of Denver, as trustee (the "Trustee").

In connection with the preparation of the Appraisal, the undersigned Appraiser hereby certifies for the benefit of the Trustee as follows:

1. The Appraiser is a "Qualified Appraiser" within the meaning of such term as used in the Indenture.
2. The Appraisal constitutes a "Qualified Appraisal Report" within the meaning of such term as used in the Indenture.
3. The definition of market value for each of the properties described in the Appraisal is the same as the "As Is Value" for such property within the meaning of such term as used in the Indenture.
4. The method of calculating the bulk sale discount as set forth in the Appraisal produces a bulk sale discount which is the same as the calculation required by the Indenture for the Bulk Sale Discount.
5. The comparable sales in 1987 were not used in the appraisal because they would not have materially effected the conclusions of value of the Appraisal.

IN WITNESS WHEREOF, the undersigned has executed this certificate on behalf of Joseph L. Hastings Company as of this ___ day of ___, 1988.

JOSEPH L. HASTINGS
COMPANY

_____

May 13, 1988

Central Bank of Denver
Tower 3, 5th Floor
1515 Arapahoe Street
Denver, CO 80202

Attention: Corporate Trust Department

$11,000,000
THE COLORADO SPRINGS-STETSON HILLS
PUBLIC BUILDING AUTHORITY
Landowner Assessment Lien Bonds
Series 1988A

Ladies and Gentlemen:

This agreement is provided on behalf of The Colorado Springs-Stetson Hills Public Building Authority (the "Authority") and AmWest Development I Limited Partnership (the "Company").

The Authority has previously issued its Landowner Assessment Lien Bonds, Series 1986A, in the aggregate principal amount of $15,000,000 (the "Series 1986A Bonds"), and is in the process of issuing its Landowner Assessment Lien Bonds, Series 1988A, in the aggregate principal amount of $11,000,000 (the "Series 1988A Bonds").

The purpose of this agreement is to set forth the understanding among the Authority, the Company and Central Bank of Denver, as trustee for the Series 1986A Bonds and the Series 1988A Bonds (the "Trustee"). On or prior to the issuance of the Series 1988A Bonds, the Company and the Authority will provide the Trustee the following information:

1. Information satisfactory to the Trustee establishing the nature of the public improvements to be financed with the proceeds of the Series 1988A Bonds, including, if requested by the Trustee, information concerning the types of public improvements, their location and the relationship to the improvements financed with the proceeds of the Series 1986A Bonds.

2. The Company will engage a qualified appraiser as provided in the definition of "Qualified Appraiser" in the Indenture of Trust dated as of December 1, 1986, by the Authority and the Trustee as shall be acceptable to the Trustee, to provide appraisals on an annual basis for the land which is encumbered for the benefit of the Series 1986A Bonds and the Series 1988A Bonds and be completed within 90 days, and shall continue not less often than annually thereafter so long as any Series 1986A Bonds or Series 1988A Bonds shall remain outstanding, unless the Trustee shall determine that such an appraisal is unnecessary in a given year or years. Zaleski and Company, if willing and able to provide such appraisal, will be included among the list of Qualified Appraisers submitted by the Company to the Trustee.

Very Truly yours,

THE COLORADO SPRINGS-STETSON HILLS PUBLIC AUTHORITY

By: /s/ Gregory D. Timm
Name: Gregory D. Timm
Title: Secretary

AMWEST DEVELOPMENT I LIMITED PARTNERSHIP

By: /s/ Gregory D. Timm

Name: Gregory D. Timm
Title: President of General Partner
AmWest Development Corporation.

Accepted as of the date set forth above by the Central Bank and Trust Company of Denver, d/b/a/ Central Bank of Denver, a Banking Corporation, as trustee.

By: /s/ Kenneth B. Buckius
Name: Kenneth B. Buckius
Title: VP

NEW ISSUE

Kutak Rock & Campbell, Bond Counsel, is of the opinion that, assuming continuing compliance with certain requirements described herein, under the laws, regulations, rulings and judicial decisions existing on the date of the original delivery of the Series 1988A Bonds, interest on the Series 1988A Bonds is not includible in gross income of a registered owner thereof for purposes of federal or State of Colorado income taxation. See "TAX EXEMPTIONS."

$11,000,000
THE COLORADO SPRINGS-STETSON HILLS PUBLIC BUILDING AUTHORITY

Landowner Assessment Lien Bonds, Series 1988A

Dated: May 15, 1988 Due: May 15, as shown below

The Colorado Springs-Stetson Hills Public Building Authority, Landowner Assessment Lien Bonds, Series 1988A (the "Series 1988A Bonds"), will be issued as fully

registered bonds without coupons in the denomination of $5,000 or any integral multiple thereof. Principal will be payable upon surrender of the Series 1988A Bonds at the Central Bank and Trust Company of Denver (doing business as Central Bank of Denver, A Banking Corporation), in Denver, Colorado, as trustee (the "Trustee"). Interest on the Series 1988A Bonds is payable on May 15 and November 15 of each year, commencing November 15, 1988, by check or draft mailed by the Trustee to the registered owners of the Series 1988A Bonds. See "THE SERIES 1988A BONDS."

MATURITIES, AMOUNTS, RATES AND PRICES

Due May 15	Amount Maturing	Interest Rate	Due May 15	Amount Maturing	Interest Rate
1990	$250,000	6.50%	1995	$360,000	8.20%
1991	265,000	7.00	1996	390,000	8.40
1992	285,000	7.50	1997	425,000	8.60
1993	310,000	7.75	1998	460,000	8.80
1994	330,000	8.00	1999	505,000	9.00

$2,555,000 9.20% Term Bonds due May 15, 2003
$4,865,000 Term Bonds due May 15, 2008, N.R.O.
Price of all Series 1988A Bonds Offered: 100%
(Plus accrued interest from May 15, 1988)

The Series 1988A Bonds are subject to mandatory redemption (including mandatory sinking fund redemption) as set forth in this Official Statement. In addition, the Series 1988A Bonds (other than the Series 1988A Bonds maturing on May 15, 2008) are subject to optional prior redemption, without premium on or after May 15, 1996, as set forth in this Official Statement. The Series 1988A Bonds maturing on May 15, 2008 are subject to optional redemption on or after May 15, 1998, with a

premium in certain years. See "THE SERIES 1988A BONDS – Redemption Provisions."

The Series 1988A Bonds do not constitute a debt or indebtedness of The Colorado Springs-Stetson Hills Public Building Authority (the "Authority"), the City of Colorado Springs, Colorado (the "City"), or any other political subdivision within the meaning of any constitutional, charter or statutory provision or limitation; are not general obligations of the Authority or any other political subdivision: and are payable and collectible solely out of the Allocated Assessment Charges imposed on approximately 272 acres of land in the City, amounts on deposit in a Reserve Fund initially funded with the proceeds of the Series 1988A Bonds and certain other amounts pledged under the Indenture referred to herein. See "SECURITY FOR THE SERIES 1988A BONDS." The registered owner of any Series 1988A Bond may not look to any general or other fund of the City for the payment of principal or interest on the Series 1988A Bonds. See "SECURITY FOR THE SERIES 1988A BONDS" and "THE INDENTURE – Flow of Funds."

The Authority has previously issued, sold and delivered its Landowner Assessment Lien Bonds, Series 1986A, in the aggregate principal amount of $15,000,000 pursuant to an Indenture of Trust (the "1986A Indenture") and certain financing documents (the "1986A Bond Documents"), all dated as of December 1, 1986 to finance certain public undertakings within the Stetson Hills Master Plan Area boundaries. The trust estate pledged under the 1986A Indenture does not constitute, in any manner, security for the 1988A Bonds, and the Indenture under which the Series 1988A Bonds are being issued does not

constitute, in any manner, security for the Series 1986A Bonds. No Event of Default under the 1986A Bond documents shall constitute an Event of Default under the 1988A Bond Documents, and no Event of Default under the 1988A Bond Documents shall constitute an Event of Default under the 1986A Bond Documents. See "SECURITY FOR THE SERIES 1988A BONDS."

Each prospective investor should read this entire Official Statement and should give particular attention to the section entitled "RISK FACTORS."

The Series 1988A Bonds are offered when, as and if issued by the Underwriters named below and subject to prior sale, or withdrawal of such offer without notice. The offer of the Series 1988A Bonds is subject also to the delivery of an approving opinion by Kutak Rock & Campbell, as Bond Counsel, and other conditions referred to herein. See "LEGAL MATTERS." It is expected that the Series 1988A Bonds will be available for delivery in Denver, Colorado on or about June 16, 1988, against payment therefor.

KIRCHNER MOORE & COMPANY

HANIFEN, IMHOFF INC.

A subsidiary of Drexel Burnham Lambert Incorporated

The date of this Official Statement is May 20, 1988

* * *

payment of the Series 1988A Bonds. To the extent that other Property Owners become obligated for the payment or prepayment of Allocated Assessment Charges, their

financial condition and operations may also affect payment of the Series 1988A Bonds. In addition, another entity involved in a merger, consolidation or other transaction involving acquisition of substantially all of the Company's assets may assume the Company's obligations under certain circumstances. See "THE DEVELOPMENT AGREEMENT – Covenants of the Company."

Under the documents relating to the Series 1988A Bonds, the Company is restricted from making distributions of earnings, profits, land or other assets to its partners as long as the Bonds remain outstanding. However, the Company may make return-of-capital distributions provided certain conditions are met. See "GLOSSARY" and "THE DEVELOPMENT AGREEMENT – Covenants of the Company." Distributions of cash or other assets beyond these amounts could adversely affect the Company's financial condition and ability to make later payments or prepayments of Allocated Assessment Charges and increase the Bondholders' risk.

Enforcement of Collection Remedies

In the event any Allocated Assessment Charges are delinquent, the Trustee is authorized to enforce the Assessment Lien on all or any part of the Property through the institution of foreclosure proceedings pursuant to court action. Subsequent to the entry of an order of foreclosure by a court, the Trustee may obtain a sale of a particular parcel or parcels of the Property to recover the amount delinquent, as well as the costs of foreclosure

proceedings. Because the Assessment Lien would be foreclosed through judicial rather than administrative procedures, delays in foreclosure of the Assessment Lien should be anticipated, and such delays may be substantial. See "THE ASSESSMENT AND LIEN AGREEMENT – Methods of Foreclosure."

The security provided by the Assessment Lien will depend on the value of the Property that may be realized if a foreclosure of the Assessment Lien were necessary. The Company is required to furnish the Trustee at least annually with a Qualified Appraisal Report of the Property remaining subject to the Assessment Lien and to maintain land subject to the Assessment Lien with an Appraised Value (with adjustments for deposits in the Bond Fund and Reserve Fund as described herein) of at least 160% of the amount of Allocated Assessment Charges then outstanding, all as more fully described herein. It is likely that the Company will be required to subject additional land to the Assessment Lien from time to time to satisfy this continuing obligation to meet the 160% Test. In addition, the Company and other Property Owners are not permitted to substitute land encumbered by the Assessment Lien unless the 160% Test will be met taking the substitution into account. See "THE ASSESSMENT AND LIEN AGREEMENT – Releases or Substitutions of the Property." Similarly, the Authority may not issue Additional Bonds under the Indenture unless the 160% Test will be met taking the Additional Bonds into account. However, despite imposition of these appraised value restrictions, foreclosure is a time-consuming remedy, and foreclosure sales may generate proceeds less than appraised values. See "SECURITY FOR THE SERIES

1988A BONDS – Allocated Assessment Charges and Assessment Lien." According to the El Paso County Public Trustee's office, during 1987 there was a significant increase in the

* * *

Lien Agreement, the Authority, the Trustee and the property owners shall amend the Assessment and Lien Agreement to reflect a schedule of Allocated Assessment Charges with respect to each parcel of property employing the new zoning or land use designation adopted by the City. The amendment to the Assessment and Lien Agreement as provided in the preceding sentence will not be effective unless the Trustee receives satisfactory evidence that the 110% Test and the 160% Test will be met subsequent to the change, and that such modification will not, in the opinion of nationally recognized bond counsel, cause interest on the Bonds to be includable in gross income for federal income tax purposes.

Releases or Substitutions of the Property

Notwithstanding any provision of the Assessment and Lien Agreement, the Trustee will (1) at any time no event of default exists under the Assessment and Lien Agreement, the Development Agreement or the Indenture, upon the written request of the Property Owner, or (2) if an event of default exists, upon the request of an Approving Governmental Body, execute a release with respect to the Assessment and Lien Agreement and any and all other documents, instruments and conveyances as necessary or appropriate to release from the Assessment Lien all or any portion of the Property to be conveyed to

an Approving Governmental Body or other person (other than an Approving Governmental Body) upon payment and receipt by the Trustee of the Allocated Assessment Charges with respect to such parcel of the Property. In addition, the Trustee may release any acreage as to which payment of the applicable Allocated Assessment Charges are made, as long as the Trustee is provided, among other things, satisfactory evidence that after the release the 110% Test and the 160% Test will continue to be met.

Releases of Property also will be permitted if other property is substituted as specified in the Assessment and Lien Agreement. Substitution of Property to be subject to the Assessment Lien will be permitted if all of the following conditions are satisfied:

(a) A good and sufficient first Assessment Lien is conveyed to the Trustee on property located within the Stetson Hills Master Plan Area that previously was not subject to the Assessment Lien;

(b) The Property Owners provide the Trustee with a title insurance policy, in an amount not less than the Principal Component of the unpaid Allocated Assessment Charges on the portion of Property to be released upon substitution, insuring that the Assessment Lien on the property referred to in (a) above, constitutes a first lien subject only to Permitted Encumbrances; and

(c) The Trustee receives satisfactory evidence that both the 110% Test and the 160% Test will be met after giving effect to the substitution.

Optional Prepayment of
Allocated Assessment Charges

Each Property Owner may prepay all or any portion of the unpaid balance of the Allocated Assessment Charges against any portion of the Property at any time and without penalty other than any applicable Premium Component. All prepayments will be paid over to the Trustee for application in accordance with the Indenture. In the event that Allocated Assessment Charges are prepaid by the Property Owners, the prepayment will reduce the Allocated Assessment Charges with respect to the land designated, to the extent of such prepayments. Any partial prepayment of the Allocated Assessment Charges will be applied first to the Interest Component, with any balance to be applied to the Principal Component and Premium Component, if any, of the applicable Allocated Assessment Charges.

Covenants of Company

The Stetson Hills Master Plan and the zoning designation of the Property are subject to modification or amendment at the request of the Company and upon the approval of the City. The Company covenants in the Assessment and Lien Agreement not to request any change in the Stetson Hills Master Plan or the zoning designation of the property which will substantially and adversely affect the security for the payment of the bonds or which would violate any provision of the Assessment and Lien Agreement or the Development Agreement or which would cause any certification of the Company to the Trustee to be or become untrue in any respect. The

Company will provide written notice to the Trustee within 10 days after any request for a change, modification or amendment to the Stetson Hills Master Plan or the zoning designation of the Property.

As long as the Bonds are outstanding, the Company agrees that the following tests will continuously be met:

(a) the 110% Test;

(b) the Principal Component of the unpaid Allocated Assessment Charges will bear interest at the Assessment Interest Rate or the Penalty Rate, as applicable, until paid in full; and

(c) the 160% Test.

The Company agrees to amend the Assessment and Lien Agreement to increase the Allocated Assessment Charges or to subject additional land within the Stetson Hills Master Plan Area to the Assessment Lien as necessary to comply with the requirements described above.

On or before December 31 of each year, the Company is to provide the following to the Trustee: (i) a certificate to the effect that the Company is in compliance with all of its obligations under the Development Agreement and

* * *

"160% Test" means the test to be applied in certain circumstances under the Indenture, the Development Agreement and the Assessment and Lien Agreement under which the formula

$$\frac{AV}{AAC-(RF + BF)}$$

is required to yield a result not less than 1.6, where "AV" is the Appraised Value of the Property then subject to the Assessment Lien as set forth in a Qualified Appraisal Report addressed to the Trustee and the Original Purchaser, "AAC" is the total unpaid Principal Component plus the total unpaid Interest Component of the Allocated Assessment Charges then unpaid and outstanding (plus the total Principal Component of the Allocated Assessment charges to be levied in connection with the issuance of any Additional Bonds), "RF" is the amount then on deposit in the Reserve Fund, and "BF" is the amount then on deposit in the Bond Fund.

"Original Purchaser" means (a) with respect to the Series 1988A Bonds, Kirchner Moore & Company and Hanifen, Imhoff Inc., and their successors, and (b) with respect to each series of Additional Bonds, such purchaser or purchasers as the Authority shall designate in writing to the Trustee, and their successors.

"Penalty Rate" means 20% per year or a lower rate that at the time is the maximum lawful interest rate under the laws of the State of Colorado and any applicable federal law.

"Permitted Encumbrances" means, as of any particular time, (i) liens for taxes and assessments not then delinquent, (ii) the Assessment and Lien Agreement, the Indenture, the Development Agreement and any financing statements naming the Authority of the Property Owners as debtor and naming the Trustee or the Authority as secured party filed to protect security interests

granted by the Assessment and Lien Agreement, the Indenture and the Development Agreement, (iii) utility access and other easements and rights of way, restrictions and exceptions which, in the opinion of Independent Counsel, will not interfere with or impair the Property, (iv) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to property similar in character to the Property and as do not, in the opinion of Independent Counsel, materially impair the value of the property affected thereby or the security for the Bonds, (v) any lien or encumbrance for the purpose of developing or improving property within the Stetson Hills Master Plan Areas and having a priority junior to the Assessment Lien, as set forth in an opinion of Independent Counsel or a title insurance policy acceptable to the Trustee, and (vi) those liens and encumbrances specified in the Assessment and Lien Agreement.

"Premium Component" means the portion of the Allocated Assessment Charges which are designated and paid as a premium with respect to the Principal Component if the Series 1988A Bonds become subject to mandatory redemption

* * *

THE COLORADO SPRINGS-
STETSON HILLS PUBLIC BUILDING AUTHORITY,

A Nonprofit Corporation Organized Under the
Laws of the State of Colorado,

AND

THE CENTRAL BANK AND TRUST COMPANY OF
DENVER, D/B/A CENTRAL BANK OF DENVER,
A BANKING CORPORATION
as trustee

INDENTURE OF TRUST

Dated as of May 15, 1988

* * *

ARTICLE II
THE BONDS

* * *

Section 2.04. *Authentication*. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Indenture unless and until a certificate of authentication on such Bond substantially in the form set forth on Exhibit A attached hereto shall have been duly executed by the Trustee, and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and

delivered under this Indenture. The certificate of authentication of the Trustee on any Bond shall be deemed to have been executed by the Trustee if signed by an authorized representative of the Trustee, but it shall not be necessary that the same representative of the Trustee execute the certificate of authentication on all of the Bonds.

* * *

Section 2.06. *Delivery of Series 1988A Bonds*. Upon the execution and delivery of this Indenture, the Authority shall execute and deliver the Series 1988A Bonds to the Trustee and the Trustee shall authenticate the Series 1988A Bonds and deliver them to the Original Purchaser thereof as directed by the Authority as hereinafter in this Section provided.

Prior to the delivery by the Trustee of the Series 1988A Bonds there shall be filed with the Trustee:

(a) a copy, duly certified by the Secretary of the Authority, of a resolution adopted by the Authority authorizing the issuance of the Series 1988A Bonds and the execution and delivery by the Authority of this Indenture, the Development Agreement and the Public Improvements Assessment and Lien;

(b) original executed counterparts of the Development Agreement and the Public Improvements Assessment and Lien;

(c) original executed counterparts of this Indenture;

(d) a copy, duly certified by the Clerk of the City, of a resolution adopted by the City approving the issuance of the Series 1988A

Bonds and the execution and delivery by the Authority of this Indenture, the Development Agreement and the Public Improvements Assessment and Lien;

(e) a title insurance policy, in form and substance satisfactory to the Trustee and the Original Purchaser, insuring the first mortgage interest of the Trustee on the Property pursuant to the Public Improvements Assessment and Lien and this Indenture, subject to no encumbrances other than Permitted Encumbrances, in an amount not less than the Lien Amount;

(f) evidence satisfactory to the Trustee that the 110% Test and the 160% Test shall be met upon the issuance of the Series 1988A Bonds; and

(g) a request and authorization to the Trustee on behalf of the Authority and signed by its President to authenticate and deliver the Series 1988A Bonds to the Original Purchaser upon payment to the Trustee, but for the account of the Authority, of a sum specified in such request and authorization plus accrued interest thereon to the Bond Delivery Date. The proceeds of such payment shall be paid over to the Trustee and deposited in the Bond Fund, the Reserve Fund, the Cost of Issuance Account and the Construction Fund as provided in Section 5.03 of this Indenture.

* * *

ARTICLE IX
THE TRUSTEE

Section 9.01. *Acceptance of Trusts.* The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

(a) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in the exercise of such rights and powers as an ordinary, prudent man would exercise or use under the circumstances in the conduct of his own affairs; provided, however, that the Trustee shall be entitled to reasonable reliance upon an opinion of counsel as set forth in subsection (b) below.

(b) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees, but shall be answerable for the conduct of the same in accordance with the standard specified above, and shall be entitled to reasonably rely upon the advice of counsel to the Trustee concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the

opinion or advice of any attorney (who may be the attorney or attorneys for the Authority or the Company) approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action or inaction in good faith in reliance upon such opinion or advice.

(c) The Trustee shall not be responsible for any recital herein or in the Bonds (except with respect to the certificate of the Trustee endorsed on the Bonds), or for the recording or re-recording, filing or re-filing of this Indenture, or for the validity of the execution by Authority of this Indenture, or any supplements hereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder. The Trustee may become the owner of Bonds secured hereby with the same rights which it would have if not the Trustee.

(e) The Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper Person or Persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any Person who at the time of making such request or giving such authority or consent is the owner of any Bond shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency of validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed by the Authority Representative or the Company Representative as sufficient evidence of the facts therein contained and prior to the occurrence of a Default of which the Trustee has been notified as provided in Section 9.01(h) hereof, or of which by Section 9.01(h) it is deemed to have notice, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed by it to be necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of such officials of the Authority who executed the Bonds (or their successors in office) under the seal of the Authority to the effect that a resolution in the form therein set forth has been adopted by the Authority as conclusive evidence that such resolution has been duly adopted and is in full force and effect.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its negligence or willful default.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any Default hereunder except (i) failure by the Authority to cause to be made any of the payments to the Trustee required to be made by Article IV hereof and (ii) failure by the Authority or the Company to file with the Trustee any

document required by this Indenture or the Development Agreement or the Public Improvements Assessment and Lien to be so filed subsequent to the issuance of the Bonds, unless the Trustee shall be specifically notified in writing of such Default by the Authority or by the owners of at least twenty-five percent (25%) in aggregate principal amount of Outstanding Bonds, and all notices or other instruments required by this Indenture to be delivered to the Trustee, must, in order to be effective, be delivered at the principal corporate trust office of the Trustee, and in the absence of such notice so delivered the Trustee may conclusively assume there is no Default except as aforesaid.

(i) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right fully to inspect any and all of the property herein conveyed, including all books and records of the Authority pertaining to the collection of Allocated Assessment Charges and the construction of the Improvements, and to take such memoranda from and with regard thereto as may be desired.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(k) Notwithstanding anything elsewhere in this Indenture with respect to the authentication of any Bonds, the withdrawal of any cash, the release of any property or any action whatsoever within the purview of this Indenture, the Trustee shall have the right, but shall not be required, to demand any showings, certificates,

opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action, by the Trustee deemed desirable for the purpose of establishing the right of the Authority to the authentication of any Bonds, the withdrawal of any cash or the taking of any other action by the Trustee.

(l) Before taking the action referred to in Section 8.03 or 8.08 hereof, the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful default in connection with any such action.

(m) all moneys received by the Trustee shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law.

(n) No provision in this Indenture shall require the Trustee to expend or risk its capital or its own funds or to incur any financial liability in the exercise of its rights and powers and duties as Trustee under this Indenture.

Section 9.02. *Fees, Charges and Expenses of the Trustee and Paying Agents*. The Trustee shall be entitled to receive, as an inception fee, the sum designated by the Authority from moneys on deposit in the Cost of Issuance Account. The Trustee and any Paying Agents shall also be entitled to payment and reimbursement for reasonable fees for

their services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee in connection with such services solely from moneys made available as permitted by Section 5.09(b) hereof. Upon an Event of Default, but only upon an Event of Default, the Trustee shall have a first lien with right of payment prior to payment on account of principal of, premium, if any, and interest on any Bond upon the Trust Estate for the foregoing fees, charges and expenses incurred by the Trustee.

Section 9.03. *Notice to Bondholders if Default Occurs.* If a Default occurs of which the Trustee is by Section 9.01(h) hereof required to take notice or if notice of Default be given as therein provided, then the Trustee shall promptly give written notice thereof by registered or certified mail to the owner of each Bond shown by the list of Bondholders required by the terms of Section 4.06 hereof to be kept at the principal corporate trust office of the Trustee.

Section 9.04. *Intervention by the Trustee.* In any judicial proceeding to which the Authority or the Company is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of owners of the Bonds, the Trustee may intervene on behalf of Bondholders and shall do so if requested in writing by the owners of at least twenty-five percent (25%) of the aggregate principal amount of Outstanding Bonds.

Section 9.05. *Successor Trustee.* Any corporation or association into which Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assests

as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become successor Trustee hereunder and vested with all of the title to the Trust Estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 9.06. *Resignation by the Trustee.* The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving thirty (30) days' written notice by registered or certified mail to the Authority and to the owner of each Bond as shown by the list of Bondholders required by Secion 4.06 hereof to be kept by the Trustee, and such resignation shall not take effect until the appointment of a successor Trustee by the Bondholders or by the Authority.

Section 9.07. *Removal of the Trustee.* The Trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee and to the Authority and signed by the owners of a majority in aggregate principal amount of Outstanding Bonds.

Section 9.08. *Appointment of Successor Trustee by Bondholders.* In case the Trustee hereunder shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by

the owners of a majority in aggregate principal amount of Outstanding Bonds by an instrument or concurrent instruments in writing signed by such owners, or by their attorneys in fact duly authorized, a copy of which shall be delivered personally or sent by registered mail to the Authority. In case of any such vacancy, the Authority, by an instrument executed, attested and sealed by those of its officials who executed and attested the Bonds, may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed by the Bondholders in the manner above provided; and such temporary trustee so appointed by the Authority shall immediately and without further act be superseded by the trustee appointed by the Bondholders; provided, however, that in the event the temporary trustee appointed by the Authority shall not be superseded by a trustee appointed by the Bondholders within six (6) months from the effective date of appointment by the Authority, the right of Bondholder to appoint a successor trustee shall be deemed to be waived and the trustee appointed by the Authority shall be deemed to be the Trustee hereunder. Notice of the appointment of a successor Trustee shall be given in the same manner as provided in Secion 9.06 hereof with respect to the resignation of a Trustee. Every such Trustee appointed pursuant to the provisions of this Section shall be a trust company or a bank in good standing having a reported capital and surplus of not less than $10,000,000 if there be such an institution willing, qualified and able to accept the trust upon customary terms.

Section 9.09. *Concerning Any Successor Trustee*. Every successor Trustee appointed hereunder shall execute,

acknowledge and deliver to its or his predecessor and also to the Authority and the Company an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Authority, or of its successor, execute and deliver an instrument transferring to such successor all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor the Trustee shall deliver all securities and moneys held by it as the Trustee hereunder to its successor. Should any instrument in writing from the Authority be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Authority. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed or recorded by the successor Trustee in each recording office where the Indenture shall have been filed or recorded.

Section 9.10. *Appointment of Co-Trustee*. It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the law of the State) denying or restricting the right of banking corporations or associations to transact business as the Trustee in such jurisdiction. It is recognized that in

case of litigation under this Indenture or foreclosure under the Public Improvements Assessment and Lien, and in particular in case of the enforcement of any such instruments on Default, or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as granted herein or in the Public Improvements Assessment and Lien, or take any other action which may be desirable or necessary that the Trustee appoint an additional individual or institution as a separate or Co-Trustee. The following provisions of this Section are adapted to these ends.

The Trustee may appoint an additional individual or institution as a separate or Co-Trustee, in which event each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate or Co-Trustee but only to the extent necessary to enable such separate or Co-Trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or Co-Trustee shall run to and be enforceable by either of them.

Should any deed, conveyance or instrument in writing from the Authority be required by the separate or Co-Trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such deeds, conveyances and instruments in writing shall, on request, be executed, acknowledged and

delivered by the Authority. In case any separate or Co-Trustee, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate or Co-Trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a new Trustee or successor to such separate or Co-Trustee.

* * *

Johnson
DEPOSITION EXHIBIT 260
1-24-90 **LO**
AGREN, BLANDO & ASSOCIATES

CERTIFICATE OF QUALIFIED APPRAISER
1988A

This Certificate is rendered on behalf of Joseph L. Hastings Company (the "Appraiser") in connection with the issuance of an appraisal report dated January 4, 1988 (the "Appraisal") of selected parcels of property from the Stetson Hills Master Plan located northeasterly of Powers Boulevard and Barnes Road in the City of Colorado Springs, Colorado. The Appraisal has been issued by the Appraiser for the benefit of AmWest Development I, Limited Partnership (the "Company"). The Company is participating in the issuance of $11,000,000 in aggregate principal amount of certain Landowner Assessment Lien Bonds, Series 1988A (the "Series 1988A Bonds") being

issued by the Colorado Springs-Stetson Hills Public Building Authority (the "Authority") pursuant to an Indenture of Trust, dated as of May 15, 1988 (the "Indenture"), between the Authority and The Central Bank and Trust Company of Denver, d/b/a Central Bank of Denver, A Banking Corporation, as trustee (the "Trustee").

In connection with the preparation of the Appraisal and the issuance of the Series 1988A Bonds, the undersigned Appraiser hereby certifies for the benefit of the Trustee as follows:

1. The Appraiser is a "Qualified Appraiser" with the meaning of such term as used in the Indenture. (See Exhibit A Attached).

2. The Appraisal constitutes a "Qualified Appraisal Report" within the meaning of such term as used in the Indenture.

3. The Summary of Appraisal Report dated January 4, 1988 and set forth as Appendix B to the Official Statement dated May 20, 1988 (the "Official Statement") prepared for use in connection with the offering and sale of the Series 1988A Bonds, constitutes a fair and accurate summary of the material provisions of the Appraisal.

4. The definition of market value for each of the properties described in the Appraisal is the same as the "As Is Value" for such property within the meaning of such term as used in the Indenture.

5. The method of calculating the bulk sale discount as set forth in the Appraisal produces a bulk sale discount which is the same as the calculation required by the Indenture for the Bulk Sale Discount.

6. The process of updating the Stetson Hills appraisal began in the fall of 1987, due to changes requested by the Building Authority; the process of continued [sic] over a period of many months. I have during this time received other comparable sales which I reviewed in the process but were not added to the appraisal report. These transactions were considered but did not materially alter the appraisal value of the parcels included in the appraisal report.

7. The discounting for bulk sale was computed in accordance with "Bulk Sale Discount" factors defined in the Indenture of Trust dated December 1, 1986, on pages 8 and 9. The mathematical computations of these factors is detailed in table 10.1 and 11.3. The appropriate Carry Costs Factors, Time Discounted Value, and Risk Profit Sales Factors account for the "Bulk Sales Discount" required by the Indenture of Trust.

"Public Improvements Assessment and Lien" means the agreement of that name of even date herewith between the Company and the Authority and recorded in the real property records of the Office of the County Clerk and Recorder of El Paso County, Colorado.

IN WITNESS WHEREOF, the undersigned has executed this Certificate on behalf of Joseph L. Hastings Company as of this 16th day of June, 1988.

JOSEPH L. HASTINGS COMPANY

By: /s/ Jospeh L. Hastings
Name: Joseph L. Hastings
Title: M.A.I.

Crandall
DEPOSITION EXHIBIT 331A
4-16-90 **LO**
AGREN, BLANDO & ASSOCIATES

(LOGO) **Central Bank**
Denver

January 10, 1989

Mr. David J. Powers
Mr. Charlie Malcombson
Stetson Hills
5455 North Union Boulevard
Colorado Springs, CO 80918

RE: Stetson Hills PBA Landowner Assessment Lien
Bond Series 1986A
Account No. 80-5021

Gentlemen:

The Reserve Fund Requirement has been recalculated by the Trustee, in accordance with the requirements of the Indenture, as of December 31, 1988. The Requirement will increase by $40,250 for the calculation period ending December 30, 1989. Quarterly installments will be due as

set forth below in order to satisfy the Reserve Requirement.

Date	Installment Due	Total Requirement
March 15, 1989	$10,062.50	$1,469,812.50
June 15, 1989	10,062.50	1,479,875.00
September 15, 1989	10,062.50	1,489,937.50
December 15, 1989	10,062.50	1,500,000.00

The Reserve Fund investments that matured on December 29, 1988 were reinvested at Capital Federal in a certificate maturing on June 29, 1989. The total amount of the maturing CD's on December 29 equalled $844,129.32. This resulted in a balance in the Reserve Fund that was $62,620.53 in excess of the then current Reserve Requirement. This excess amount was attributable to investment earnings and was transferred out of the Reserve Fund in accordance with the Indenture. The CD purchased on December 29 was in the principal amount of $781,508.79, bearing interest at 8.50% and maturing June 29, 1989. Please provide written confirmation that the Reserve Fund has been invested in accordance with your instructions.

Please provide instructions with respect to any rebate deposit required pursuant to section 5.11 of the Indenture. Last year you provided us with a certificate from your accountants regarding the calculation. We would appreciate again receiving a certification for the current year.

Please review Section 5.3 of the Development Agreement with respect to your obligations to provide certain reports and certifications to the Trustee. Those items required annually that are not required in connection with your

fiscal year end, were due to the Trustee not later than December 30, 1988. Please advise with respect to the status of these items.

Additionally, please recall that as a condition to accepting the appraisal prepared by Mr. Hastings in connection with the amendments to the Lien and the issuance of the Series 1988 bonds last June, it was agreed that a new appraisal, prepared by Zaleski and Associates, would be delivered to the Trustee by not later than year end. This has not been received to date.

Please provide written response to the foregoing requests not later than January 31, 1989. If the requirements as described above have not been satisfied, or adequate explanation provided as to why these requirements remain unsatisfied, Central Bank of Denver, as Trustee, will proceed with such actions as are permitted under the Indenture for the protection and benefit of the Bondholders at that time.

Please do not hesitate to contact me if you have any questions, and I appreciate your prompt attention to these matters. Thank you.

Cordially,
/s/ Cherry Crandall
Cheryl A. Crandall
Corporate Trust Officer

CAC:ah

c: Gregory Timm
Gregory V. Johnson
John Conrad
Steven Jeffers

Pederson
DEPOSITION EXHIBIT 356
3-1-90
AGREN BLANDO & ASSOCIATES

(LOGO)

STETSON HILLS
5455 North Union Blvd.
Colorado Springs, CO 80918
(303) 528-1808

January 14, 1989

Ms. Cheryl A. Crandall
Corporate Trust Officer
Central Bank of Denver
1515 Arapahoe Street
Denver, Colorado 80902

Dear Ms. Crandall:

Thank you for reminding us of certain requirements set forth in the 1986A Colorado Springs Stetson Hills Public Building Authority. In review of the document we understand the requirement to be within 120 days of year end. If you would be so kind as to please provide me with copies of reports of compliance from last year. This would help me to prepare them without outside expense.

We have retained Zaleski and Associates to prepare a new appraisal at a cost of $58,000.00. Thus far an amount of $32,000.00 has been expended with a balance to complete of $24,000.00. The expenditure of $32,000.00 really brought forward only two comparable sales in 1988. One of those sales was to Christian Missionary Alliance of 5.0 acres at $2.80 per square foot by Briargate Joint Venture. The other sale was to International Bible Society of 9.72 acres at $1.75 per square foot by Northgate.

In a meeting with Zaleski and Associates on December 16, 1988 I was told that due to the depressed value of the two sales, tremendous over supply of ground and lack of demand, only a subjective appraisal would be possible at this time. Subjective in the sense that we were in their opinion going to see extremely soft market conditions for seven to ten years. This subjective opinion had to do with several plant closings in the Springs which was the cause for tremendous job loss!

In discussions with Zaleski an [sic] Associates what their subjective thought meant in appraisal value they said is a 60% to 65% drop. Frankly upon hearing this I told them to stop and not spend anymore of our money. I said after I looked into the matter I would get back to them. On a limited basis on my own I have done a review of sales which occurred in 1988. My findings have been the same two sales mentioned above and a couple of sales on South Academy Boulevard for which Zaleski and Associates said were not comparable.

It seems a waste of money on our part to spend any more money on this subjective appraisal approach. Certainly if you take a look at absorption and the two sales above in the master planned communities in Colorado Springs for 1988 we are all going to own this land into the next century. I intend to rest on an earlier appraisal as a more realistic look and do not intend to submit ourselves to this subjective approach of land values below cost of improvements, let alone land costs and soft costs.

I would appreciate your input on this matter.

Sincerely,
/s/ David J. Powers
David J. Powers
President

cc: Steven Jeffers
John Conrad
Gregory V. Johnson
Gregory Timm
Roy I. Pring
Charlie Malcomson
Jim Wilson

DJP/rkw

Smith
DEPOSITION EXHIBIT 397
4-6-90 **LO**
AGREN, BLANDO & ASSOCIATES

(LOGO) **Central Bank**
Denver

1515 Arapahoe Street
Denver, CO 80292
(303) 803-3456

April 10, 1989

$11,000,000
The Colorado Springs - Stetson Hills Public Building Authority Landowner Assessment Lien Bonds
Series 1988A

Dear Bondholder:

Central Bank Denver, National Association, as Trustee for the above-referenced Bonds, hereby notifies you of the occurrence of certain Events of Default as set forth below:

1. An Event of Default has occurred under section 6.1(b) of the Development Agreement for failure to deliver to the Trustee the reports required by section 5.3 thereof. Such failure has continued for more than thirty (30) days after the written notice to the Authority which specified such failure and requested that it be remedied.

2. An Event of Default has occurred under section 8.01(a) of the Indenture as a result of the occurrence of the above Event of Default under the Development Agreement.

3. An Event of Default has occurred under section 8.01(c) of the Indenture due to the Authority's failure to perform under a covenant entered into by a letter of agreement dated May 13, 1988, among the Authority, AmWest Development I Limited Partnership (the "Company") and the Trustee. The Authority covenanted to cause to be delivered to the Trustee by not later than March 1, 1989, the appraisal referred to in such agreement. No such appraisal has been delivered to the Trustee, and such failure has continued for more than thirty (30) days after written notice to the Authority which specified such failure and requested that it be remedied.

4. An Event of Default has occurred under section 6.1(d) of the Public Improvements

Assessment and Lien (the "Lien") as a result of the occurrence of the above Events of Default under the Indenture.

The reports required to be filed with the Trustee under the Development Agreement include: the audited financial statements of the Company, a certificate of an independent public accountant that the Company has complied with the requirements of the Development Agreement with respect to distributions of profits and earnings, an accounting which sets forth information regarding property sales and the sales price received for property subject to the Lien, information regarding the status of the payment of taxes and assessments on property subject to the Lien, and a general certification by the Company that it is in compliance with all covenants and agreements under the Development Agreement and Lien.

The Lien and Indenture also require that the Company and Authority satisfy certain financial ratios in order to ensure that the appraised value of the property pledged to the Trustee and subject to the Lien is at all times adequate to fully secure the principal of and interest on the Bonds. The Company and the Authority have failed to certify to the Trustee, as is periodically required, that they are in compliance with all covenants under the bond documents, which certifications would include confirmation of compliance with those certain financial tests. Additionally, failure by the Company and the Authority to provide the Trustee with a current appraisal report, as required by the Indenture, makes it impossible for the Trustee to have independently verified whether there is

compliance, and, in fact, whether the land currently subject to the Lien is of sufficient value to secure the Bonds as required by the Indenture.

The above described Events of Default constitute failures of performance of convenents [sic] by the Company or the Authority. There has been no monetary default as of the date of this notice for any failure to pay principal of or interest on the Bonds as the same have become due.

Please be advised that the Trustee holds in its possession of a Reserve Fund which is fully funded in an amount sufficient to pay one full year of interest on all Bonds and principal on any Bonds maturing on or before November 15, 1989, as the same become due.

The Trustee is currently reviewing the remedies for default with legal counsel. Owners of a majority in aggregate principal amount of Bonds outstanding have the right under the Indenture to direct the proceedings taken in connection with the enforcement of the terms of the Indenture, provided satisfactory indemnity is furnished to the Trustee. The Trustee will provide subsequent notification to all owners of the Bonds upon completion of legal review in order to advise owners of the various remedies which are available to the Trustee to pursue on their behalf and upon their direction.

Please refer any questions to Ken Buckius at 303/820-4261.

Thank you for your attention to this matter.

CENTRAL BANK DENVER,
National Association,
as Trustee

Smith
DEPOSITION EXHIBIT 398
4-6-90 **LO**
AGREN, BLANDO & ASSOCIATES

(LOGO) Central Bank
Denver

1515 Araphoe Street
Denver, CO 80292
(303) 893-3456

October 18, 1989

$11,000,000
The Colorado Springs - Stetson Hills Public Building Authority Landowner Assessment Lien Bonds
Series 1988A

Dear Bondholder:

Central Bank Denver, N.A., as Trustee, has previously provided you notice of non-monetary Events of Default by Stetson Hills Public Building Authority and AMWEST Development I Limited Partnership. This letter is to notify you that the Property Owner, AMWEST Development I Limited Partnership has failed to pay Allocated Assessment Charges in amounts sufficient to replenish the Reserve Fund by the due date established by the Trustee in accordance with Section 5.07 of the Trust Indenture. Failure to timely replenish the Reserve Fund is deemed to be a monetary Event of Default under Section 6.1(a) of the Public Improvements Assessment and Lien. AMWEST Development I Limited Partnership was notified on October 12, 1989, that failure to cure said Default within twenty (20) days of such notice as required in the Public Improvements Assessment and Lien will cause the

occurrence of an Event of Default to be continuing under the Public Improvements Assessment and Lien, Section 6.1(a) and 6.3, and will also cause the occurrence of an Event of Default under Section 8.01(a) of the Trust Indenture. If said default is not cured within the 20 day period, Central Bank Denver, N.A., as Trustee, will notify holders of the failure to cure, and of the courses of action available to the Trustee under the Indenture.

Because of the previous non-monetary Events of Default, Central Bank Denver, N.A., as Trustee, is making arrangements for the inspection of all books and records in the possession of the Authority by an independent accountant in accordance with Section 4.05 of the Trust Indenture. The Trustee has also obtained an appraisal report prepared by Freeman and Associates relative to the real property and improvements thereon which secure the bonds and the conclusions are as follows:

1988A Bond Collateral

Gross Retail Lot Sales (Values)	$13,706,825
Net Discounted Retail Lot Sales (Values)	7,348,000
Bulk Sale Value	962,500

This information is provided for your consideration for future action to be taken by the Trustee. Please refer any questions to Donna Crump (303) 820-4396 or Ken Buckius (303) 820-4261.

Central Bank Denver, N.A.
Trustee

Smith
DEPOSITION EXHIBIT 401
4-6-90 **LO**
AGREN, BLANDO & ASSOCIATES

(LOGO) Central Bank
Denver

1515 Arapahoe Street
Denver, CO 80292
303 893-3456

November 15, 1989

$11,000,000
The Colorado Springs - Stetson Hills Public Building Authority Landowner Assessment Lien Bonds
Series 1988A

Dear Bondholder:

On October 18, 1989, we notified you that a monetary Event of Default had occurred under Section 6.1(a) of the Public Improvements Assessment and Lien and 8.01(e) of the Trust Indenture and that the Property Owners, AMWEST Development I Limited Partnership, had been given a period of twenty (20) days to cure said Event of Default. This is to notify you that said Event of Default was not cured during the time allowed.

Central Bank Denver, N.A., as Trustee, in accordance with Section 8.02 of the Trust Indenture, hereby declares the principal of all outstanding bonds and the interest accrued thereon to November 15, 1989, to be immediately due and payable. As provided in Section 8.07 of the Trust Indenture, monies currently on deposit with the Trustee in the amount of $501,834.70 shall be applied to the principal and interest due, without preference or priority

of principal over interest or of interest over principal, ratably, according to the amounts due, respectively, for principal and interest, to the persons entitled thereto without any discrimination or privilege. A pro-rata payment of principal and interest due will be made to each bondholder upon presentation of the outstanding bonds to our offices as instructed below. Upon payment of a portion of the principal and interest due, a replacement bond, representing the outstanding amount of principal not paid, will be issued and returned to each bondholder.

The Trustee is considering foreclosure of the lien with respect to all of the property. Any monies received by the Trustee pursuant to such proceedings, after payment of the costs and expenses of the proceedings resulting in the collection of such monies, shall be applied, when received, in the same manner as described above.

If foreclosure action is taken, upon its completion, the Trustee will review further options available with respect to sale of the property, and will present such options to all bondholders for review. We will keep you informed of significant developments.

Please bring your bonds to Central Bank Denver, N.A., 1515 Arapahoe Street, Denver, CO 80292, ATTN: Bond Services Department, Tower II, 7th Floor, or send to:

Central Bank Denver, N.A.
P. O. BOX 17289, T.A.
Denver, CO 80217
ATTN: Bond Services Department

Central Bank Denver, N.A.
Trustee

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 89-F-1250 and
Civil Action No. 89-F-1806

FIRST INTERSTATE BANK OF DENVER, N.A., and
JACK K. NABER,
Plaintiffs,

vs.

KIRCHNER MOORE & COMPANY, d/b/a DBLKM Inc.;
HANIFEN IMHOFF, INC.;
THE COLORADO SPRINGS-STETSON HILLS PUBLIC BUILDING AUTHORITY;
ROY I. PRING; and
THE CENTRAL BANK & TRUST COMPANY OF DENVER,
Defendants,

and

KIRCHNER MOORE & COMPANY, d/b/a DBLKM Inc.,
Third-Party Plaintiff,

vs.

RESOLUTION TRUST CORPORATION, as Conservator for
Capitol Federal Savings and Loan Association of Denver;
AMWEST DEVELOPMENT CORP.;
AMWEST DEVELOPMENT I LIMITED PARTNERSHIP; and
Third-Party Defendants.

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

(Filed June 28, 1990)

Sherman G. Finesilver, Chief Judge

THIS MATTER comes before the court on various motions of parties. This litigation arises from the alleged fraudulent issuance and sale of bonds in violation of federal securities law. Plaintiffs bring this cause of action pursuant to § 10(b) of the Securities Exchange Act of 1934 and rules promulgated thereunder by the Securities Exchange Commission. 15 U.S.C. § 78a *et seq.* Jurisdiction arises pursuant to 28 U.S.C. § 1331. The factual and procedural background of this litigation has been outlined in prior orders and will not be repeated here.

Three motions for summary judgment have been filed pursuant to Fed.R.Civ.P. 56. Defendant Roy I. Pring moves for summary judgment of claims of plaintiffs First Interstate Bank of Denver, N.A. and Jack K. Naber. Defendant Central Bank & Trust Company of Denver moves for summary judgment of plaintiffs' claim. Third-party defendant Resolution Trust Corporation as Conservator for Capitol Federal Savings and Loan Association of Denver moves for summary judgment of third-party claim of defendant and third-party plaintiff Kirchner Moore & Company.

I.

Summary judgment is proper where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); *Willner v. Budig*, 848 F.2d 1032, 1033-34 (10th Cir.), *cert. denied*, ___ U.S. ___, 109 S.Ct. 840 (1989). The plain language of Rule 56(c) mandates the entry of summary judgment against the party who fails to make a showing that is sufficient to establish the existence of an element essential to that

party's case, and on which that party will bear the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). In reviewing a motion for summary judgment, the court must view the evidence in the light most favorable to the party opposing the motion, and resolve all doubts in favor of the existence of triable issues of fact. *World of Sleep, Inc. v. La-Z-Boy Chair Co.*, 756 F.2d 1467, 1474 (10th Cir.), *cert. denied*, 474 U.S. 823 (1985); *Ross v. Hilltop Rehabilitation Hosp.*, 676 F.Supp. 1528 (D. Colo. 1987).

In *Celotex v. Catrett*, 477 U.S. 317 (1986), the Supreme Court held that the language of Rule 56(c) does *not* require the moving party to show an *absence* of issues of material fact in order to be awarded summary judgment. *Id.*, 477 U.S. at 322. The movant merely has the initial responsibility of informing the court of the basis for the motion, and identifying those portions of the record it believes show a lack of genuine issue. *Id.*, 477 U.S. at 323. This burden is discharged merely by pointing out to the court there is an absence of evidence to support the non-movant's case. *Id.*, 477 U.S. at 325. On the other hand, the non-movant has the burden of showing that there *are* issues of material fact to be determined. *Id.*, 477 U.S. at 322-23. *See* Childress, *A New Era for Summary Judgments: Recent Shifts at the Supreme Court*, 116 F.R.D. 183 (1987).

II.

Defendant Roy I. Pring ("Pring") moves for summary judgment of claims of plaintiffs First Interstate Bank of Denver, N.A. and Jack K. Naber (the "plaintiffs"). Plaintiffs contend Pring is (1) primarily liable under Section 10(b) of the Securities Exchange Act of 1934 and Rule

10b-5 of the Securities Exchange Commission and is (2) secondarily liable as (a) participant in conspiracy to commit fraud under Rule 10b-5; (b) controlling person under § 20 of the Securities Exchange Act; and (c) aider and abettor under Rule 10b-5.

Plaintiffs fail to oppose Pring's motion as to primary liability and as to conspiracy liability.

In order to establish liability of Pring as controlling person pursuant to § 20 of the Securities Exchange Act plaintiffs must prove the purported controlling person (1) actively participated in overall management and operation of the controlled entity and (2) actively participated, in some meaningful sense, in the fraud perpetrated by that entity. *Harrison v. Enventure Capital Group, Inc.*, 666 F.Supp. 473, 478 (W.D.N.Y. 1987); *Lanza v. Drexel & Co.*, 479 F.2d 1277 (2d Cir. 1973) (*en banc*). Pring correctly states plaintiffs must offer evidence that Pring controlled the developer, AmWest I Development Limited Partnership ("AmWest"), and participated in a fraud committed by the developer or the issuer of the Bonds, the Colorado Springs-Stetson Hills Public Building Authority. In opposition plaintiffs state Pring owned or controlled the collateral property, was a substantial interest holder in AmWest and was a principal creditor of AmWest. Pring was a creditor of AmWest. His last loan to AmWest was made in 1985. Pring was no longer an officer of AmWest when the Official Statement was prepared or when the Bonds were issued. Even taken as true plaintiffs' evidence fails to establish that Pring actually participated in the alleged fraud of the developer or the issuer of the Bonds. *Seattle-First National Bank v. Carlstedt*, 678 F.Supp.

1543 (W.D.Okla. 1987). There is no genuine issue of material fact in regard to active participation in the alleged fraud in order to establish controlling person liability.

In order to establish aider and abettor liability under Rule 10b-5 plaintiff must prove (1) primary violation of Rule 10b-5 by another; (2) knowledge of the violation by alleged aider and abettor; and (3) substantial assistance by the aider and abettor. *Feldman v. Pioneer Petroleum, Inc.*, 606 F.Supp. 916 (W.D.Okla. 1985), *aff'd*, 813 F.2d 296 (10th Cir. 1987); *Johnson v. Chilcott*, 658 F.Supp. 1213 (D.Colo. 1987). Plaintiffs contend Pring's silence and inaction in the face of undervalued collateral constitute substantial assistance to establish liability as aider and abettor. However silence and inaction are not bases to establish substantial assistance absent an additional fiduciary duty to disclose. *Dirks v. SEC*, 463 U.S. 646, 653-64 (1983); *Chiarella v. United States*, 445 U.S. 222, 227-35 (1980). Plaintiffs fail to offer persuasive authority or evidence to establish that Pring breached any fiduciary duty owed plaintiffs. Plaintiffs fail to establish a material fact as to the third element necessary for aider and abettor liability.

III.

Defendant Central Bank & Trust Company of Denver ("CBD") moves for summary judgment of plaintiffs' claim against CBD. Plaintiffs contend Central Bank is secondarily liable under Section 10(b) of the Securities Exchange Act and Rule 10b-5 of the Securities Exchange Commission as aider and abettor. The elements of aider and abettor liability are identified above.

Plaintiffs allege CBD knowingly took affirmative steps to postpone review of the so-called Hastings appraisal, a key element in the alleged scheme to defraud. Plaintiffs contend this was reckless behavior by CBD, thereby satisfying the knowledge or scienter requirement of aider and abettor liability. However the scienter requirement may not be satisfied by showing recklessness absent an additional duty to disclose. *National Union Fire Ins. Co. of Pittsburgh v. Eaton*, 701 F.Supp. 1031 (S.D.N.Y. 1988). Plaintiffs do not raise a genuine issue of material fact as to CBD's knowledge of fraud allegedly perpetrated by AmWest or as to additional duty to disclose owed by CBD.

IV.

Third-party defendant Resolution Trust Corporation ("RTC") as Conservator for Capitol Federal Savings and Loan Association of Denver ("Capitol Federal") moves for summary judgment of third-party claim of defendant and third-party plaintiff Kirchner Moore & Company ("KMC"). KMC brings a claim for contribution, based on Capitol Federal's liability under § 10b and Rule 10b-5 as an aider and abettor. The elements of aider and abettor liability are identified above. KMC has not presented evidence to establish Capitol Federal, at the time it lent an additional $1.5 million to AmWest, had any knowledge of fraud allegedly committed by AmWest or any other entity. The scienter requirement for aider and abettor liability may not be satisfied by showing recklessness absent an additional duty to disclose. *National Union Fire Ins. Co. of Pittsburgh v. Eaton*, 701 F.Supp. 1031 (S.D.N.Y. 1988). KMC does not raise a genuine issue of material fact

in regard to Capitol Federal's knowledge of the alleged fraud or as to a duty to disclose.

V.

Defendants Central Bank, Hanifen Imhoff, Inc. and Roy I. Pring have filed a motion to compel depositions of plaintiffs' expert witnesses. However the deadline for completion of discovery has passed. The motion to compel is denied.

VI.

ACCORDINGLY IT IS ORDERED that the motion of Roy I. Pring for leave to file reply brief in excess of ten pages, filed June 20, 1990, is GRANTED. The reply brief is deemed filed through. Plaintiffs' motion for leave to submit supplemental memorandum respecting Pring's motion for summary judgment, filed June 21, 1990, is GRANTED. The supplemental memorandum is deemed filed through.

IT IS FURTHER ORDERED that the motion of RTC for leave to file reply brief in excess of ten pages, filed June 20, 1990, is GRANTED. The reply brief is deemed filed through.

IT IS FURTHER ORDERED that the motion for summary judgment of Roy I. Pring pursuant to Fed.R.Civ.P. 56 is GRANTED. The Clerk of the Court is DIRECTED to enter judgment in favor of defendant Roy I. Pring and against plaintiffs First Interstate Bank of Denver, N.A. and Jack K. Naber.

IT IS FURTHER ORDERED that the motion for summary judgment of Central Bank & Trust Company of Denver pursuant to Fed.R.Civ.P. 56 is GRANTED. The Clerk of the Court is DIRECTED to enter judgment in favor of Central Bank & Trust Company of Denver and against plaintiffs First Interstate Bank of Denver, N.A. and Jack K. Naber.

IT IS FURTHER ORDERED that the motion for summary judgment of Resolution Trust Corporation as Conservator for Capitol Federal Savings and Loan Association of Denver pursuant to Fed.R.Civ.P. 56 is GRANTED. The Clerk of the Court is DIRECTED to enter judgment in favor of third-party defendant Resolution Trust Corporation as Conservator for Capitol Federal Savings and Loan Association of Denver and against defendant and third-party plaintiff Kirchner Moore & Company.

IT IS FURTHER ORDERED that the motion to compel of defendants Central Bank, Hanifen Imhoff, Inc. and Roy I. Pring, filed June 21, 1990, is DENIED.

IT IS FURTHER ORDERED that remaining parties are DIRECTED to file a Second Amended Pretrial Order on or before noon on July 5, 1990. Counsel for plaintiffs are DIRECTED to take the lead in preparation of the Pretrial Order. All counsel are DIRECTED to ensure that the Pretrial Order accurately reflects all remaining viable claims of parties and is complete in all respects.

The court strongly discourages pretrial motions. Evidentiary matters will be addressed at trial.

The court is in receipt of KMC's Notice of Name Change, filed June 25, 1990. The caption shall reflect Kirchner Moore & Company is now doing business as DBLKM Inc.

Done this 26th day of June 1990 at Denver, Colorado.

By the Court:

/s/ Sherman G. Finesilver
Sherman G. Finesilver,
Chief Judge
United States District Court

UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
DISTRICT OF COLORADO

JAMES R. MANSPEAKER, CLERK

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Magistrate D.E. Abram

RE: 89-F-1250, FIRST INTERSTATE BANK OF DENVER v. KIRCHNER MOORE & CO., et [sic] 89-F-1806, IDS HIGH YIELD TAX-EXEMPT FUND v. KIRCHNER MOORE & CO., et a [sic]

Enclosed please find a copy of ORDER DATED 6/26/90, entered by Chief Judge Sherman G. Finesilver in the referenced matter.

JAMES R. MANSPEAKER, CLERK
BY: /s/ Patricia J. Allen
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 89-F-1250 and
Civil Action No. 89-F-1806

FIRST INTERSTATE BANK OF DENVER, N.A., and JACK K. NABER,

Plaintiffs,

v.

KIRCHNER MOORE & COMPANY, d/b/a DBLKM, INC.;
HANIFEN IMHOFF, INC.;
THE COLORADO SPRINGS-STETSON HILLS PUBLIC BUILDING AUTHORITY;
ROY I. PRING; and
THE CENTRAL BANK & TRUST COMPANY OF DENVER,

Defendants,

and

KIRCHNER MOORE & COMPANY, d/b/a DBLKM, INC.,

Third Party Plaintiff,

v.

RESOLUTION TRUST CORPORATION, as Conservator for Capitol Federal Savings and Loan Association of Denver; AMWEST DEVELOPMENT CORP.; AMWEST DEVELOPMENT I LIMITED PARTNERSHIP;

Third Party Defendants.

JUDGMENT

(Filed July 3, 1990)

PURSUANT TO and in accordance with the Order on Motions for Summary Judgment entered June 26, 1990, by the Honorable Sherman G. Finesilver, Chief Judge, it is

ORDERED that judgment is entered in favor of the defendants, Roy I. Pring and Central Bank & Trust Company of Denver, and against the plaintiffs, First Interstate Bank of Denver, N.A. and Jack K. Naber, and the action and complaint are dismissed as to these defendants only. It is

FURTHER ORDERED that judgment is entered in favor of third party defendant Resolution Trust Corporation, as Conservator for Capitol Federal Savings and Loan Association of Denver, and against defendant and third-party plaintiff Kirchner Moore & Company. The third-party complaint is dismissed as to this defendant only.

DATED at Denver, Colorado, this 3rd day of July, 1990.

FOR THE COURT:

JAMES R. MANSPEAKER, Clerk

By: /s/ Stephen P. Ehrlich
Stephen P. Ehrlich
Chief Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 89-F-1250

FIRST INTERSTATE BANK OF DENVER, N.A., and JACK K. NABER,

Plaintiffs

v.

KIRCHNER MOORE & COMPANY, et al.,

Defendants.

ORDER PURSUANT TO RULE 54(B)
ENTERING FINAL JUDGMENT AS TO PLAINTIFFS' CLAIMS AGAINST DEFENDANTS CENTRAL BANK AND PRING
(Filed Oct. 23, 1990)

THIS MATTER COMES BEFORE THE COURT upon "Plaintiffs' Motion for Entry of Final Judgment Against Defendants Pring and Central Bank." Having reviewed the Motion, and being well advised with respect to the status of this litigation and as to the claims of plaintiffs against these particular defendants, the Court hereby,

FINDS AND DETERMINES PURSUANT TO RULE 54(b) that there is no just reason for delay as to the entry of final judgment as to plaintiffs' claims against defendants Pring and Central Bank; and it is, hereby,

ORDERED, that as to the claims of plaintiffs against defendants Central Bank and Pring, and upon the grounds previously set forth in this Court's "Order on

Motions for Summary Judgment" dated June 26, 1990, final judgment shall be and hereby is entered against plaintiffs and in favor of defendants Pring and Central Bank.

DONE AND SIGNED this 23 day of October, 1990.

BY THE COURT:
/S/ Sherman G. Finesilver
Sherman G. Finesilver
United States District Judge

UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
DISTRICT OF COLORADO

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Oct. 23, 1990

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Magistrate D.E. Abram

RE: 89-F-1250, FIRST INTERSTATE BANK OF DENVER v. KIRCHNER MOORE & CO., et [sic]
89-F-1806, IDS HIGH YIELD TAX-EXEMPT FUND v. KIRCHNER MOORE & CO., et [sic]

Enclosed please find a copy of ORDER PURSUANT TO R.54 (b) ENTERING FINAL JUDGMENT AS TO PLTF'S CLAIMS AGAINST DEFTS. CENTRAL BANK AND PRING DATED Oct. 23, 1990 entered by Chief Judge Sherman G. Finesilver in the referenced matter.

JAMES R. MANSPEAKER, CLERK
BY: /s/ N. Hatcher
Deputy Clerk

PUBLISH

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

FIRST INTERSTATE BANK OF DENVER, N.A. and JACK K. NABER, Plaintiffs-Appellants,	)	
v.	)	No. 90-1315
ROY I. PRING and CENTRAL BANK AND TRUST COMPANY OF DENVER, Defendants-Appellees.	)	

Appeal from the United States District Court
for the District of Colorado
(D.C. Nos. 89-F-1250 and 89-F-1806)
(Filed July 8, 1992)

Miles M. Gersh (Laurie K. Rottersman, also of Gersh & Danielson; and Edwin S. Kahn of Kelly/Haglund/Garnsey & Kahn, with him on the briefs), Denver, Colorado, for Plaintiffs-Appellants.

Miles C. Cortez, Jr. (Stephen J. Hensen with him on the briefs), Cortez & Friedman, Denver, Colorado, for Defendant-Appellee Roy I. Pring.

Tucker K. Trautman (Neal S. Cohen and Polly A. Atkinson with him on the briefs), Ireland, Stapleton, Pryor &

Pascoe, Denver, Colorado, for Defendant-Appellee Central Bank of Denver.

Before LOGAN and TACHA, Circuit Judges, and BRIMMER, District Judge.*

LOGAN, Circuit Judge.

Plaintiffs First Interstate Bank of Denver, N.A. and Jack K. Naber appeal from the district court's grant of summary judgment for defendants Roy I. Pring (Pring) and Central Bank of Denver (Central Bank). Plaintiffs assert claims under § 10(b) and § 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78j(b) and 78t(a), and SEC Rule 10b-5, 17 C.F.R. § 240.10b-5.

I

The securities involved in this case are $11 million in bonds issued in June 1988 by the Colorado Springs-Stetson Hills Public Building Authority (the Authority).[1] Previously, in 1986, the Authority had issued $15 million in bonds. The 1986 and 1988 bonds were similar. Both were issued to reimburse the developer for the cost of public improvements in a planned residential and commercial development in Colorado Springs called Stetson Hills.

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* The Honorable Clarence A. Brimmer, Chief Judge, United States District Court for the District of Wyoming, sitting by designation.

[1] The Authority defaulted early in the litigation. Plaintiffs settled claims against the underwriters of the 1988 bonds.

Bondholders were to be repaid from assessments paid to the developer by commercial builders, or from a reserve fund. The bonds were secured by "landowner assessment liens" covering approximately 250 acres for the 1986 bond issue and approximately 272 acres for the 1988 bond issue. Under the bond covenants the land subject to the liens was required to be worth at least 160% of the bonds' outstanding principal and interest (the 160% test). Plaintiffs purchased some of the 1988 bonds, which later went into default.

The developer of Stetson Hills was AmWest Development I Limited Partnership (AmWest L.P.). The sole general partner of AmWest L.P. was AmWest Development Corporation (AmWest). Three AmWest officers were the only members of the board of directors of the Authority, including David J. Powers, AmWest's majority shareholder and chairman of AmWest's board of directors, and Gregory D. Timm, AmWest's president and a member of its board.

Defendant Pring was involved in the Stetson Hills development as one of the original owners of the property, as an investor in AmWest L.P., and as a creditor, officer, and director of AmWest. Pring and his family in 1983 entered into an option agreement with AmWest to sell the 2135 acres that became the Stetson Hills property.[2] The optionee was changed from AmWest to AmWest L.P. in 1986. AmWest L.P. then partially exercised the option,

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[2] Pring and his wife owned 51% of the Stetson Hills property; other members of Pring's family owned the remaining 49%. In entering the option agreement Pring acted as attorney in fact for the other members of his family.

purchased portions of the property, and began development. Pring and his family continued to own, subject to the option agreement, the remainder of the land within Stetson Hills.

Pring and his family formed Pring Investments, Ltd., a limited partnership, with Pring as the sole general partner; Pring Investments, Ltd. later became a twenty percent shareholder of AmWest. Pring and his wife made a loan of $1.37 million to AmWest; this loan later was converted into a limited partnership contribution in Amwest L.P. whereby Pring and his wife each came to hold 17.5% interests in AmWest L.P. Pring and his wife also made a loan of $5 million to AmWest L.P. Beginning in 1983 Pring was a vice-President[3] and director of AmWest. In February 1988, before the 1988 bonds were issued, his term as vice-president expired; in December 1988, after the 1988 bonds were issued, he resigned as director.

Central Bank served as the indenture trustee for both bond issues. In January 1988 Central Bank received an "updated" appraisal of the land securing the 1986 bonds that also included the land proposed to secure the 1988 bonds.[4] This appraisal was performed by Joseph Hastings, the appraiser who in 1986 had performed the original appraisal of the land securing the 1986 bonds. The

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[3] Pring and others state that he was only an "honorary" vice-president.

[4] Central Bank rejected the "updated" appraisal because it combined the property securing the 1986 bonds and that proposed to secure the 1988 bond issue. The appraiser, Joseph Hastings, later separated the appraisals.

updated appraisal showed land values essentially unchanged from the earlier 1986 appraisal.

Thereafter Central Bank became aware of serious concerns about the adequacy of the security for the 1986 bonds and the accuracy of the Hastings appraisal. Central Bank received from the senior underwriter of the 1986 bonds a letter that expressed concern that the 160% test was not being met. The letter also expressed concern about declining property values in Colorado Springs and the fact that they were operating on an appraisal that was over sixteen months old. The letter suggested that the Authority may have given "false or misleading certifications" of compliance with the bond covenants. I R. tab 12, ex. G at 455. Subsequently, after reviewing the updated Hastings appraisal, the 1986 underwriter wrote a second letter to Central Bank expressing serious concerns that the updated appraisal was using outdated[5] real estate values.

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[5] The letter closed with the following two paragraphs:

> At this date we are operating on an appraisal that is over 16 months old. In light of the declining property values in Colorado Springs and the foreclosure sales, many of which have occurred within the vicinity of the collateral, an appraisal that reflects property values similar to those utilized for the 1986 appraisal of record should be suspect and not relied on without further independent check. As Trustee, you have the authority to name an independent appraisal if you are not satisfied.
>
> It appears that the officers of the Stetson Hills Building Authority have failed to conform to the Bond Covenants to which they agreed. In the interest of the bondholders I call upon you to the [sic] enforce the covenants or Invoke the Remedies. It is our opinion that, based on your statement to us and based on

Central Bank investigated. Some information contradicted the 1986 underwriter's concerns.[6] Central Bank asked its own in-house appraiser to review the Hastings updated appraisal. He did so, expressed concerns about the age of comparable sales used and the methodology used, and suggested that there be an independent review of the appraisal. Apparently Central Bank trust officer Cheryl Crandall calculated that even under the Hastings appraisal, the collateral value did not meet the 160% test. *See* I R. tab 12, ex. B at 115. In light of all the foregoing, as trustee for the 1986 bonds, in a letter dated March 22, 1988, Central Bank required "that an independent review of the appraisal be conducted by a different appraiser." I R. tab 12, ex. I. Central Bank's letter to Timm stated three reasons for requiring an independent review: (1) the comparable sales data was outdated; (2) the methodology did not consider a bulk sale in a forced liquidation context;

> the project analysis, in addition to a reserve fund deficiency the Stetson Hills Public Building Authority is not meeting either the 110% or the 160% Test.

I R. tab 12, ex. G at 456.

[6] Central Bank inquired as to why the values in the updated appraisal were substantially unchanged from the original appraisal despite declines in local real estate values. A representative of AmWest and the Authority, Timm, said the reason was that $10 million in improvements had been added to the property since the original appraisal. Timm wrote Central Bank's trust officer handling the 1986 bonds that the concerns expressed in the 1986 underwriter's letter were "unfounded." II Supp. R. tab 65. In addition, a different underwriter for the planned 1988 bond issue disputed several things in the 1986 underwriter's letters, including the method of calculating the 160% test and the suggestion that the Authority may have made false or misleading certifications. *See* II Supp. R. tab 72, ex. 72B.

and (3) considering the local real estate market the values appeared "unjustifiably optimistic." *Id.*

Thereafter there was a flurry of meetings and communications between Central Bank and Timm and others.[7] The ultimate result was that Central Bank agreed to delay an independent review of the Hastings updated appraisal until the end of the year, approximately six months after the closing on the 1988 bond issue.

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[7] On March 31 a Central Bank vice-president, Ken Buckius, met with Timm and representatives of the underwriter for the proposed 1988 bonds. Timm assured Buckius and the others that the Hastings appraisal, in fact, had considered more recent comparable sales and these had not materially affected the values. Timm also said that Hastings had used the proper methodology. Apparently Timm indicated a willingness to add approximately $2 million worth of property to the 1986 assessment lien to bring the 160% test into compliance. Timm offered to have Hastings provide a certification regarding the updated appraisal. Timm objected to Central Bank's requirement of an independent review of the Hastings updated appraisal and offered instead to have a different appraiser do a new appraisal at the end of calendar year 1988.

Central Bank's trust committee met on or about April 5 to consider Timm's proposal to delay the independent review. The committee agreed to accept the proposal. This agreement, with conditions that included adding approximately $2 million worth of property to the assessment lien, was conveyed to Timm in a letter dated April 8 from Buckius. *See* II Supp. R. tab 75. Thereafter, on May 13, a little more than one month before the closing on the 1988 bonds, Timm sent a letter to Central Bank on behalf of the Authority and the developer. The letter indicated that annual appraisals of the land securing the 1986 bonds and the proposed 1988 bonds would be provided, with the first of these to be completed within ninety days of December 1, 1988. Buckius countersigned the letter, signifying Central Bank's *See* II Supp. R. tab 240.

At least by March 1988 Pring knew that the appraisal had been questioned and that AmWest was experiencing or anticipating cash flow problems. Pring had communications with Timm in which AmWest expressed a need to acquire additional land under the option agreement. AmWest proposed that, instead of Pring receiving cash for the land purchase, Pring finance the purchase and requested that Pring agree to "cash flow arrangements." Pring refused.[8] It is undisputed that Pring stayed silent and took no action to bring what he knew to the attention of plaintiffs. From the proceeds of the 1988 bond issue Pring received almost $2 million from AmWest L.P. as payment for land purchases and as interest due on Pring's $5 million loan to AmWest L.P.

The December 1988 appraisal was begun, but the Authority refused to complete it. The 1988 bondholders were notified of the Authority's technical default. Thereafter, the Authority defaulted on payments on the 1988 bonds.

Plaintiffs allege that the 1988 bonds were sold as part of a fraudulent scheme. Plaintiffs allege that the official statement for the 1988 bonds was materially false and misleading by, inter alia, (1) representing the Hastings updated appraisal as being reliable, prudent, and correct; and (2) failing to disclose certain facts, including that Pring had refused to extend additional credit to AmWest,

---

[8] The record includes a letter from Timm to Pring with the following handwritten notation at the bottom: "Met with [Timm]. Told him I had as much money involved in AmWest now, as I ever intend to have. I will not loan more money or forego payments due us, voluntarily." I R. tab 13, ex. G.

that Pring would receive almost $2 million from the bond proceeds, that serious concerns had been raised about the accuracy of the Hastings updated appraisal, that Central Bank had required an independent review of the appraisal, that the developer had refused to provide it, and that Central Bank later had agreed to delay the independent review until December 1988.

II

We review de novo the district court's summary judgment rulings. *Eastman Kodak Co. v. Westway Motor Freight, Inc.*, 949 F.2d 317, 319 (10th Cir. 1991). We apply the same standard as the district court: "[s]ummary judgment is appropriate 'if . . . there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.' " *Id.* (quoting Fed. R. Civ. P. 56(c)). We must view the evidence in the light most favorable to the party opposing summary judgment. *World of Sleep, Inc. v. La-Z-Boy Chair Co.*, 756 F.2d 1467, 1474 (10th Cir.), *cert. denied*, 474 U.S. 823 (1985). If a reasonable trier of fact could return a verdict for the nonmoving party, summary judgment is inappropriate. *See Windon Third Oil & Gas Drilling Partnership v. FDIC*, 805 F.2d 342, 346 (10th Cir. 1986), *cert. denied*, 480 U.S. 947 (1987).

We first address plaintiffs' § 20(a) claim that Pring is liable as a controlling person of the issuer through his relationship with AmWest L.P. and AmWest. The district court applied the following two-part test for a controlling person: "(1) [defendant] actively participated in overall management and operation of the controlled entity and

(2) [defendant] actively participated, in some meaningful sense, in the fraud perpetrated by that entity." I R. tab 17 at 4 (citing *Lanza v. Drexel & Co.*, 479 F.2d 1277 (2d Cir. 1973) (en banc); *Harrison v. Enventure Capital Group, Inc.*, 666 F. Supp. 473, 478 (W.D.N.Y. 1987)). The district court held that Pring was not a controlling person because "plaintiffs' evidence fails to establish that Pring *actually participated in the alleged fraud* of the developer or the issuer of the [b]onds." *Id.* (emphasis added). Because it looked to plaintiffs' evidence, the district court clearly put the burden on plaintiffs to show that defendant actually participated in the alleged fraud.

We begin our analysis with the language of the statute. Section 20(a) of the Securities. Exchange Act of 1934 provides:

> Every person who, directly or indirectly, controls any person liable under any provision of this chapter or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.

15 U.S.C. § 78t(a). The statute first defines a controlling person as one "who, directly or indirectly, controls any person [who is] liable" for violations of the securities laws.[9] The final clause of the statute provides that even if

[9] In the regulations of the Securities and Exchange Commission (SEC) control is defined as "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise." 17 C.F.R. § 230.405.

a person is a controlling person, he nevertheless is not liable if he "acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action." The statutory language clearly suggests a two-step analysis for § 20(a) liability: (1) determining whether the defendant is a controlling person; and (2) if so, determining whether the defendant nevertheless is entitled to the good-faith defense stated in the statute's final clause.

This court has addressed the definition of controlling person under § 20(a) in only one prior case. In *Richardson v. MacArthur*, 451 F.2d 35 (10th Cir. 1971), we stated that " '[t]he statute is remedial and is to be construed liberally. It has been interpreted as requiring only some indirect means of discipline or influence short of actual direction to hold a "controlling person liable.' " *Id.* at 41-42 (quoting *Myzel v. Fields*, 386 F.2d 718, 738 (8th Cir. 1967), *cert. denied*, 390 U.S. 951 (1968)). We went on to hold that an insurance company was a controlling person over an employee who handled virtually all of the company's business in one state. *Id.* at 42. Our conclusion in *Richardson* that one can be a controlling person despite exercising only *indirect* control follows the language of the statute.

More recently this court addressed the controlling person provision of § 15 of the Securities Act of 1933,[10] 15 U.S.C. § 77*o*, in *San Francisco-Oklahoma Petroleum Exploration Corp. v. Carstan Oil Co.*, 765 F.2d 962 (10th Cir. 1985). Although § 15 and § 20(a) are not identical, the controlling person analysis is the same. *Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, 1578 (9th Cir. 1990) (en banc), *cert. denied*, 111 S. Ct. 1621 (1991). In *Carstan Oil*, we said that a plaintiff had established a prima facie case of controlling person liability "when the [primary] violation was established, and when this defendant was shown to be a controlling person." 765 F.2d at 964. We stated that to be a controlling person one "need not have been involved in the particular transaction which became the subject of the litigation." *Id.* at 965. We also said that "[t]he defendant had the burden to demonstrate the" defense provided in the last clause of § 15. *Id.* at 964.

We believe that the allocation of the burdens for controlling person liability under § 20(a) should be the same as under § 15. A natural reading of both statutes is that a plaintiff's prima facie case consists of both a primary violation and "control" by the alleged controlling

---

[10] Section 15 provides:

> Every person who . . . controls any person liable under sections 77*k* or 77*l* of this title, shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, unless the controlling person had no knowledge of or reasonable ground to believe in the existence of the facts by reason of which the liability of the controlled person is alleged to exist.

15 U.S.C. § 77*o*.

person. The final clause of both statutes ("unless the controlling person . . . "), suggests that determining the defense should follow a finding that the defendant is a controlling person. Furthermore, circuit precedent is that the defendant has the burden to establish the defense under § 15, and like the Fifth Circuit "we are not aware of any reason the burden of proof should be different, especially since the sentence structure of the two statutes is similar." *G.A. Thompson & Co. v. Partridge*, 636 F.2d 945, 958 n.23 (5th Cir. 1981).

Placing the burden of establishing the defense on the defendant makes sense because "there would be little reason for the controlling person provision unless it differed in some meaningful ways from the standards for noncontrolling person liability." *Id.* A number of other circuits place the burden of establishing the defense on the defendant. *E.g.*, *Hollinger*, 914 F.2d at 1575 & n.25 (citing cases from the Second, Fifth, Sixth, Seventh and District of Columbia Circuits); *Metge v. Baehler*, 762 F.2d 621, 631 (8th Cir. 1985) ("good faith and lack of participation are affirmative defenses in a controlling person action"), *cert. denied*, 474 U.S. 1057, *and cert. denied*, 474 U.S. 1072 (1986). Thus, once a plaintiff establishes a primary violation and that the defendant is a controlling person under § 20(a), the defendant then has the burden to show that he "acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action." 15 U.S.C. § 78t(a).

Nowhere in the statute does it say that to be a controlling person a defendant must have actually participated in the primary violation. "[T]he statute premises liability solely on the control relationship, subject to the

good faith defense. According to the statutory language, once the plaintiff establishes that the defendant is a 'controlling person,' then the defendant bears the burden of proof to show his good faith." *Hollinger*, 914 F.2d at 1575.

Thus, the language of the statute causes us to reject those decisions that may be read to require a plaintiff to show the defendant actually or culpably participated in the primary violation. *See, e.g., Sharp v. Coopers & Lybrand*, 649 F.2d 175, 185 (3d Cir. 1981) (§ 20(a) requires " 'culpable participation' in the securities violation"), *cert. denied*, 455 U.S. 938 (1982); *Carpenter v. Harris, Upham & Co.*, 594 F.2d 388, 394 (4th Cir.) (controlling person must "in some meaningful sense [be a] culpable participant[] in the acts perpetrated by the controlled person"), *cert. denied*, 444 U.S. 868 (1979); *Lanza v. Drexel & Co.*, 479 F.2d 1277, 1299 (2d Cir. 1973) (en banc) (same). Rather, the language of the statute leads us to join those circuits that hold that a plaintiff need not prove that the defendant actually or culpably participated in the primary violation. *E.G., Hollinger*, 914 F.2d at 1575 ("a plaintiff is *not* required to show 'culpable participation' "); *Metge*, 762 F.2d at 631 (rejecting the more restrictive culpable participation test); *G.A. Thompson & Co.*, 636 F.2d at 958 (the statute . . . [does not] require participation in the wrongful transaction"). This conclusion is consistent with this circuit's test for a controlling person under § 15. *See Carstan Oil*, 765 F.2d at 965.

Under this allocation of the burdens, the district court erred when it placed on plaintiffs the burden regarding defendant's actual participation in the primary violation. Actual participation in the primary violation is not part of plaintiffs' prima facie case under § 20(a); rather, nonparticipation in acts inducing or constituting

the primary violation, and good faith, are part of defendant's defense.

Applying the broad definition of control in the statute and the SEC regulation, we hold that the evidence viewed in the light most favorable to plaintiffs would support a finding by the trier of fact that Pring is a controlling person of the Authority for purposes of § 20(a). Pring was (1) a director of AmWest at all relevant times; (2) a vice-president of AmWest until February 1988; (3) the sole general partner of Pring Investments, Ltd., a twenty percent shareholder in AmWest; (4) with his wife, a thirty-five percent interest holder in AmWest L.P.; (5) with his wife, a $5 million creditor of AmWest L.P.; and (6) with his wife, and as attorney-in-fact for others in his family, the owner and controller of the remaining land under the option agreement with AmWest L.P. These facts demonstrate that Pring was in a position of at least indirect control over AmWest and AmWest L.P. Because AmWest and AmWest L.P. controlled the Authority,[11] Pring's at least indirect control extended to the Authority.

Having determined that the evidence is sufficient to avoid summary judgment against plaintiffs on the issue whether Pring is a controlling person, the second step of the § 20(a) analysis is whether Pring can establish that he

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[11] AmWest controlled AmWest L.P. as its sole general partner. AmWest's chairman of the board, AmWest's president, and another AmWest officer constituted the entire board of directors of the Authority and thus controlled it.

acted in good faith and did not participate in acts inducing the primary violation. We leave the determination of this question for the district court on remand.

III

Next we address plaintiffs' aider-and-abettor claims against Pring and Central Bank under § 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5. To establish aider-and-abettor liability a plaintiff must prove (1) the existence of a primary violation of the securities laws by another;[12] (2) knowledge of the primary violation by the alleged aider-and-abettor; and (3) substantial assistance by the alleged aider-and-abettor in achieving the primary violation. *Farlow v. Peat, Marwick, Mitchell & Co.*, 956 F.2d 982, 986 (10th Cir. 1992); *accord K&S Partnership v. Continental Bank, N.A.*, 952 F.2d 971, 977 (8th Cir. 1991), *petition for cert. filed*, 60 U.S.L.W. 3755 (U.S. Apr. 22, 1992) (No. 91-1692); *Schatz v. Rosenberg*, 943 F.2d 485, 495 (4th Cir. 1991), *cert. denied*, 112 S. Ct. 1475 (1992); *Ross v. Bolton*, 904 F.2d 819, 824 (2d Cir. 1990).[13]

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[12] Neither defendant argues that plaintiffs' evidence fails to establish a material question of fact as to the existence of a primary violation, which relieves us of further inquiry on the first element.

[13] Although the three elements seem to be universally accepted, some circuits state the second and third elements as a general awareness by the alleged aider-and-abettor that his or her role was part of an overall activity that was improper; and the alleged aider-and-abettor knowingly and substantially assisted the primary violation. *See Fine v. American Solar King Corp.*, 919 F.2d 290, 300 (5th Cir. 1990), *cert. dismissed*, 112 S. Ct. 576 (1991); *Schneberger v. Wheeler*, 859 F.2d 1477, 1480 (11th Cir. 1988), *cert. denied*, 490 U.S. 1091 (1989); *Moore v. Fenex, Inc.*, 809 F.2d 297, 303 (6th Cir.), *cert. denied*, 483 U.S. 1006 (1987); *Cleary v. Perfectune, Inc.*, 700 F.2d 774, 777 (1st Cir. 1983); *Investors Research Corp. v. SEC*, 628 F.2d 168, 178 (D.C. Cir.), *cert. denied*, 449 U.S. 919 (1980). The Third Circuit has used both formulations. *Compare Landy v. FDIC*, 486 F.2d 139, 162-63 (3d Cir. 1973), *cert. denied*, 416 U.S. 960 (1974) *with Monsen v. Consolidated Dressed Beef Co.*, 579 F.2d 793, 799 (3d Cir.), *cert. denied*, 439 U.S. 930 (1978). The Seventh Circuit considers the three elements to be additional requirements beyond a showing that the alleged aider-and-abettor committed a proscribed "manipulative or deceptive" act with the same scienter as for primary liability. *See, e.g., Schlifke v. Seafirst Corp.*, 866 F.2d 935, 947 (7th Cir. 1989). Although the Ninth Circuit generally states the elements as in the text, a recent case expressly includes in the second element the alleged aider-and-abettor's reckless disregard of the wrong and his or her role in furthering it. *See Levine v. Diamanthuset, Inc.*, 950 F.2d 1478, 1483 (9th Cir. 1991).

A

Pring's motion for summary judgment was granted by the district court on the ground that "silence and inaction are not bases to establish substantial assistance absent an additional fiduciary duty to disclose." I R. tab 17 at 5. Plaintiffs do not contend that Pring owed them a duty to disclose. Rather, plaintiffs argue that Pring's silence and inaction, in light of what he knew about AmWest and the appraisa1,[14] did constitute substantial

[14] The record makes clear that Pring knew that AmWest needed to buy additional land to use as collateral. Pring's own admissions support plaintiffs' contentions that he was aware of concerns regarding the appraisal and that an independent review would be delayed until after the bonds were issued. *See* I R. tab 13, ex. A at 114-16. Pring does not challenge the existence of a material question of fact as to the second element of aider-and-abettor liability, i.e., scienter. However, regarding the third element of substantial assistance, we assume that Pring does

assistance because Pring had actual intent to aid the primary violation.

When there is no duty to disclose, it is sometimes stated absolutely that silence or inaction cannot be the basis for aider-and-abettor liability. *E.g., Barker v. Henderson, Franklin, Starnes & Holt*, 797 F.2d 490, 495-96 (7th Cir. 1986) ("When the nature of the offense is a failure to 'blow the whistle', the defendant must have a *duty* to blow the whistle."). The weight of authority, however, is that even absent a duty to disclose, silence and inaction can be substantial assistance for aider-and-abettor liability *provided* the defendant consciously intended to assist the primary violation. *E.g., Schneberger v. Wheeler*, 859 F.2d 1477, 1480 (11th Cir. 1988), *cert. denied*, 490 U.S. 1091 (1989); *Moore v. Fenex. Inc.*, 809 F.2d 297, 303-04 (6th Cir.), *cert. denied*, 483 U.S. 1006 (1987); *Monsen v. Consolidated Dressed Beef Co.*, 579 F.2d 793, 800 (3d Cir.), *cert. denied*, 439 U.S. 930 (1978); *Woodward v. Metro Bank*, 522 F.2d 84, 97 (5th Cir. 1975). For example, in *Metge* the court said that

> in the absence of a duty to act or disclose, an aider-abettor case predicated on inaction of the secondary party must meet a high standard of intent. As applied here, *Woodward* and *Monsen* require that the aider-abettor's inaction be accompanied by actual knowledge of the underlying fraud and intent to aid and abet a wrongful act. The requisite intent and knowledge may be shown by circumstantial evidence.

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controvert the existence of conscious intent to assist the primary violation.

762 F.2d at 625. In evaluating whether silence was accompanied by a conscious or actual intent to assist the primary violation, courts have examined whether the alleged aider-and-abettor benefitted from such silence. *See. e.g., K&S Partnership*, 952 F.2d at 978; *Metge*, 762 F.2d at 629; *cf. DiLeo v. Ernst & Young*, 901 F.2d 624, 629 (7th Cir.) (on the issue of defendant's mental state, ask if "the defendant has thrown in his lot with the primary violators," e.g., did defendant have anything to gain (quoting *Barker*, 797 F.2d at 497)), *cert. denied*, 111 S. Ct. 347 (1990); *Barker*, 797 F.2d at 497 ("If the plaintiff does not have direct evidence of scienter the court should ask whether the fraud (or cover-up) was in the interest of the defendants."). This analysis is appropriate in this case.

Plaintiffs' evidence establishes that Pring had a substantial personal stake in the 1988 bond issue. Pring knew that he and his family would receive a substantial payment from AmWest L.P. from the proceeds of the 1988 bond sale.[15] Based on the record, a jury could find that

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[15] The February 24, 1988 letter from Timm to Pring indicates AmWest's plan to use $725,000 in "Funds available from the Bond Issue" to purchase land from the Pring family. I R. tab 13, ex. E at 3. In his deposition, Pring acknowledged a May 17, 1988 letter from Timm that included "[a] summary of the bond closing payments to the Pring shareholders and limited partners." I R. tab 13, ex. A at 130. Furthermore, in a letter dated June 15, 1988, the day before the bond closing, AmWest gave Pring "a detailed listing of the amounts which AmWest is arranging to remit to you from the proceeds of our June 16th bonds closing," which indicated a grand total payment of $1,965,932.08. I R. tab 13, ex. I. Although Pring's answers were somewhat hedged on the question of where the funds came from, *see* I R. tab 13, ex. A at 136-38, he admitted that the

Pring had a strong motivation to stay silent despite what he knew. Pring's possible motivation is in sharp contrast to the lesser motivations courts have held insufficient to show conscious intent. *See, e.g., DiLeo*, 901 F.2d at 629 (accountant's fees for two years of audits); *National Union Fire Ins. Co. v. Turtur*, 892 F.2d 199, 207 (2d Cir. 1989) (insurance company's premium for a guarantee). Viewing the evidence in the light most favorable to plaintiffs, the nonmoving parties on summary judgment, the trier of fact reasonably could conclude that Pring had a conscious intent to assist the alleged primary violation and that had Pring not stayed silent plaintiffs would not have suffered losses. Thus, there was a genuine issue of material fact as to the third element of substantial assistance and summary judgment on plaintiff's aiding-and-abetting claim against Pring was inappropriate.

B

Central Bank's motion for summary judgment was granted by the district court on the ground that plaintiffs failed to raise a genuine issue as to the element of scienter. The district court determined that plaintiffs had not established a duty to disclose by Central Bank. Then, citing only *National Union Fire Ins. Co. v. Eaton*, 701 F. Supp. 1031 (S.D.N.Y 1988), the district court concluded that without a duty to disclose, recklessness does not satisfy the scienter requirement for aider-and-abettor liability.

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notation "Re-closing of 6/16/88" on the June 15 letter was in his handwriting, *id.* at 136, and the trier of fact could conclude that he in fact did know the source of funds was the 1988 bond issue.

Central Bank argues that recklessness is not sufficient scienter because it had no duty to disclose. Without such a duty, Central Bank asserts, the required scienter is conscious intent, citing *Woodward, Ross, Monsen.* and *IIT v. Cornfeld*, 619 F.2d 909 (2d Cir. 1980). Central Bank argues that it did not have conscious intent to assist the primary violation, and that in any event it did not substantially assist the primary violation. Plaintiffs' primary argument is that even without a duty to disclose, recklessness is sufficient scienter. Plaintiffs contend that Central Bank acted recklessly by affirmatively agreeing to delay the independent review of the Hastings updated appraisal. Plaintiffs also assert that Central Bank did provide substantial assistance to the primary violation.

We agree with Central Bank's argument and the district court's conclusion that Central Bank owed plaintiffs no duty to disclose. An indenture trustee's duties are strictly defined and limited to the terms of the indenture. *See, e.g., Elliott Assocs. v. J. Henry Schroder Bank & Trust Co.*, 838 F.2d 66, 71 (2d Cir. 1988). The Trust Indenture Act of 1939 expressly provides that "the indenture trustee shall not be liable except for the performance of such duties as are specifically set out in such indenture." 15 U.S.C. § 77*ooo*(a)(1). Section 9.01(a) of the indenture at issue here provided that the trustee at relevant times "undertakes to perform such duties and only such duties as are specifically set forth in this [i]ndenture." II Supp. R. 53.

But the lack of a duty to disclose is not dispositive in this case. As Central Bank concedes, the Trust Indenture Act of 1939 "does not affect 'the rights, obligations, duties [, or] liabilities of any person' under the federal securities

laws." Answer Brief of Defendant-Appellee Central Bank at 29 (quoting 15 U.S.C. § 77zzz). It is clear that in a proper case it is possible for an indenture trustee to be held liable as an aider-and-abettor. *See Cronin*, 619 F.2d at 861-862 (reversing grant of summary judgment for defendant indenture trustees and remanding for further discovery despite the district court's belief "that the [trustees'] duties were limited by the terms of their indenture agreements"); *Lewis v. Marine Midland Grace Trust Co.*, 63 F.R.D. 39, 45-46 (S.D.N.Y. 1973) (denying defendants' motions to dismiss and indicating that if the elements of aiding-and-abetting liability are established the defendant indenture trustee can be liable); *cf. Ross v. Bank South. N.A.*, 837 F.2d 980, 1003 (11th Cir.) (implying that an indenture trustee could be liable if plaintiffs had *evidence*, as opposed to just conclusory allegations, that the trustee had knowledge of the fraud), *vacated*, 848 F.2d 1132 (11th Cir. 1988), *on reh'g*, 885 F.2d 723 (11th Cir. 1989) (en banc), *cert. denied*, 495 U.S. 905 (1990). Thus, Central Bank is not immune from liability if plaintiffs can prove the elements of aider-and-abettor liability.

The established rule is that recklessness is sufficient scienter for a primary violation of § 10(b) and Rule 10b-5. *E.g., Hackbart v. Holmes*, 675 F.2d 1114, 1117 (10th Cir. 1982); *accord, e.g., Van Dyke v. Coburn Enters., Inc.*, 873 F.2d 1094, 1100 (8th Cir. 1989) ("[t]he majority rule in the Courts of Appeals is that recklessness satisfies th[e] scienter requirement"; citing cases from the Second, Third, Fifth, Seventh, Ninth, Eleventh and District of Columbia

Circuits).[16] The Seventh Circuit has said that aiding-and-abetting liability requires "the same mental state [as] required for primary liability." *Barker*, 797 F.2d at 495. This circuit, in at least three cases involving claims of both primary and aiding-and-abetting liability, has indicated that recklessness is sufficient scienter without distinguishing between the claims. *See C.E. Carlson, Inc. v. SEC*, 859 F.2d 1429, 1435 (10th Cir. 1988); *Cronin v. Midwestern Okla. Dev. Auth.*, 619 F.2d 856, 862 (10th Cir. 1980); *Edward J. Mawod & Co. v. SEC*, 591 F.2d 588, 595-96 (10th Cir. 1979).

Several courts expressly have held that recklessness satisfies the scienter requirement for aiding-and-abetting liability. *See, e.g., Levine v. Diamanthuset, Inc.*, 950 F.2d 1478, 1483 (9th Cir. 1991) (including recklessness in the scienter element and citing cases); *FDIC v. First Interstate Bank*, 885 F.2d 423, 432-33 (8th Cir. 1989) (holding recklessness sufficient in a case predicated on action); *Dirks v. SEC*, 681 F.2d 824, 844-45 (D.C. Cir. 1982) (opinion of Wright, J.) (Two leading aiding-and-abetting cases "do not imply that 'knowingly * * * assist' or 'general awareness' require a higher standard for aiding or abetting liability than the general scienter standard required by *Ernst & Ernst*. Recklessness would have been enough." (footnote omitted)), *rev'd on other grounds*, 463 U.S. 646 (1983). This court has said that "a proper showing of

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[16] Recklessness satisfied the scienter requirement for common law fraud. *See, e.g., Mansbach v. Prescott, Ball & Turben*, 598 F.2d 1017, 1024 (6th Cir. 1979). Although negligence is not sufficient, the Supreme Court has left open the question of whether recklessness is sufficient scienter for a violation of § 10(b). *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 & n.12 (1976).

reckless conduct *might* satisfy [the] state of mind requirement" for aiding-and-abetting liability. *Decker v. SEC*, 631 F.2d 1380, 1388 & n.16 (10th Cir. 1980) (aiding-and-abetting claim under 15 U.S.C. § 17(e)(1)) (emphasis added).

Some courts, however, have indicated that recklessness is not sufficient scienter for aiding-and-abetting liability unless the defendant had a fiduciary duty. *See, e.g., Edwards & Hanly v. Wells Fargo Sec. Clearance Corp.*, 602 F.2d 478, 484 (2d Cir. 1979) ("We have not used the 'recklessness' standard when money damages are claimed in an aiding and abetting context, except on the basis of a breach of fiduciary duty."), *cert. denied*, 444 U.S. 1045 (1980)[17]. *See generally* William H. Kuehnle, *Secondary Liability Under the Federal Securities Laws – Aiding and Abetting, Conspiracy, Controlling Person, and Agency: Common-Law Principles and the Statutory Scheme*, 14 J. Corp. L. 313, 327-30 (1989) (stating that while some courts have adopted recklessness as a general standard for aiding-and-abetting liability, many courts use a recklessness standard only in certain circumstances, including where there is a fiduciary duty); Don J. McDermett, Jr., Note, *Liability for Aiding and Abetting Violations of Rule 10b-5: The Recklessness Standard in Civil Damage Actions*, 62 Tex. L. Rev. 1087, 1103-08 (1984) (same, finding the fiduciary duty requirement particularly clear in the Second Circuit,

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[17] We have quoted language from the Second Circuit that even if a defendant is reckless, "absent a fiduciary duty owing from [defendant] to [plaintiff] there is no aiding and abetting liability." *Farlow*, 956 F.2d at 987 (quoting *Ross*, 904 F.2d at 824). This quotation, however, was made during the course of a lengthy discussion of various cases, and *Farlow* did not adopt this view as the law of this circuit.

but indicating that some Second Circuit opinions have either hesitated to accept the requirement or have gone to great lengths to find some duty).

In this case Central Bank has mischaracterized plaintiffs' claim as one alleging that Central Bank improperly did not disclose certain facts. It is true that the primary violation alleged by plaintiffs includes the nondisclosure in the official statement of certain facts. It is also true that plaintiffs' aiding-and-abetting claim against Pring is based on the allegation that his silence and nondisclosure assisted the primary violation. But plaintiffs' claim against Central Bank is different. Plaintiffs allege that Central Bank assisted the primary violation by *affirmative action*, specifically by affirmatively agreeing to delay the independent review of the Hastings appraisal.[18]

Thus we arrive at the issue before us: when an alleged aider-and-abettor owes no duty to plaintiffs, but takes affirmative action that assists the primary violation,

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[18] In the district court plaintiffs argued that Central Bank both affirmatively acted to delay the independent review of the Hastings appraisal and failed to alert plaintiffs of the risks related to the Hastings appraisal. I R. tab 1 at 13-14 (complaint); I R. tab 12 at 1 (brief opposing motion for summary judgment (emphasizing "affirmative steps")). The district court's order only deals with plaintiffs' claim of affirmative acts. Furthermore, on appeal, plaintiffs appear to have abandoned the argument that Central Bank improperly was silent. *See* Reply Brief for the Plaintiffs-Appellants at 23 ("Central characterizes plaintiffs' showing as nothing more than an argument that Central passively failed to 'blow the whistle' on the Hastings appraisal. Central says it did not have a duty to be a whistle blower. But this is distinctly not plaintiffs' argument.").

does recklessness satisfy the scienter requirement for aiding-and-abetting liability? In light of the affirmative nature of Central Bank's alleged assistance, the non-disclosure cases relied on by Central Bank are inapposite. Central Bank asserts that "[t]here is simply no decision in this Circuit or any other which imposes aider and abettor liability upon a finding of recklessness where there is not also a breach of a duty to disclose." Answer Brief of Defendant-Appellee Central Bank at 22. However, such cases do exist, and they are the ones that are relevant here.

The Ninth Circuit's recent opinion in *Levine* is particularly enlightening. In that case the court addressed the potential liability of a trust company and a bank as aiders-and-abettors of an allegedly fraudulent diamond investment scheme. 950 F.2d at 1483-85. The trust company allegedly assisted the primary violation by, inter alia, allowing its name to be used in promotional materials, accepting telephone inquiries from investors, and issuing confirmations to investors. *Id.* at 1484. The bank allegedly assisted the primary violation by, inter alia, sending an officer to certain seminars, coordinating the handling of investor inquiries, making certain representations to investors, and considering but apparently not making an amendment to a deposit agreement to conform to certain representations. *Id.* at 1485. Of course, the facts in the instant case are different. Importantly, however, the *Levine* court considered the case before it as one based on assistance by action and for that reason expressly found irrelevant the question whether the alleged aiders-and-abettors had a duty to disclose. *See id.* at 1484-85 nn.4-5.

Further, in holding that the plaintiff's allegations adequately stated claims for aiding-and-abetting liability, the court applied a recklessness standard. *See id.* at 1484 (the trust company's actions "may well have been reckless – that is, highly unreasonable and constituting an extreme departure from standards of ordinary care"); *id.* at 1485 (plaintiff "could prove facts indicating [the bank's] reckless disregard, if not actual knowledge, of both [the primary violations] and the bank's role in the violations").

The Eighth Circuit also has applied a recklessness standard in an aiding-and-abetting case the court described as one "predicated on action." *First Interstate Bank*, 885 F.2d at 429, 432-33 (applying *Metge*, 762 F.2d at 621, to a case of common law aiding-and-abetting). In *First Interstate Bank*, despite various warnings and significant concerns about a particular customer, the defendant bank assisted the customer's fraud by processing accounts, handling wire transfers, and reversing a decision to require the customer to close his accounts. *See id.* at 424-28. The jury found the bank liable as an aider-and-abettor. *See id.* at 428. In affirming the denial of a motion for judgment n.o.v., the court said the "evidence supports an inference that [the defendant bank], with potential profits in mind, recklessly chose to continue its relationship with [the primary violator]." *Id.* at 432. The defendant bank made the argument – essentially the same argument put forth by Central Bank – that it had no fiduciary duty and therefore it could not be held liable for inaction without a showing of more than recklessness. *See id.* at 432-33. The Eighth Circuit rejected this argument, noting that this was "a case predicated on action" and stating that "[i]t need not be shown, therefore, that [the

defendant bank] consciously intended to defraud the [plaintiff]." *Id.* at 433.

The cases discussed above reject the idea that the scienter element for aiding-and-abetting liability cannot be satisfied by recklessness without a duty to disclose. We also reject that view. We hold that in an aiding-and-abetting case based on assistance by action, the scienter element is satisfied by recklessness.

"[R]eckless behavior is conduct that is 'an extreme departure from the standards of ordinary care, and which presents a danger . . . that is either known to the defendant or is so obvious that the actor must have been aware of it.' " *Hackbart*, 675 F.2d at 1118 (citation omitted); *accord, e.g., Hollinger*, 914 F.2d at 1569. We turn to the facts of this case, viewed in the light most favorable to plaintiffs, to determine whether the trier of fact reasonably could conclude that Central Bank was reckless when it agreed to delay the independent review of the Hastings updated appraisal.

Central Bank appears to argue that this was simply a "transaction[] constituting the daily grist of the mill." *Woodward*, 522 F.2d at 97. But the evidence supports the inference that this was not an ordinary transaction. Central Bank's own trust officer and others characterized this as a complicated transaction. *See* I R. tab 12, ex. G at 454; I R. tab 12, ex. B at 161. Central Bank's in-house appraiser indicated that this was the only situation in which he had been asked to review an appraisal of collateral for a bond issue. *See* I R. tab 12, ex. J at 46. Before the agreement to delay the independent review, one of Central Bank's vice-presidents assumed responsibility for the transaction

from the trust officer who had been handling it. *See* I R. tab 12, ex. B at 161. Nothing in the record suggests that in any other situation had Central Bank first decided to require an independent review of an appraisal for a bond issue and later agreed to delay it.

Central Bank argues that the agreement to delay the independent review was justified in part because it was entitled to rely on the certifications provided by the Authority and Hastings. The indenture does contain provisions to that effect. But the issue is whether agreeing to delay the independent review was an extreme departure from the standards of ordinary care that carried a known or obvious danger, not whether it was a breach of authority under the indenture. As to Central Bank's reliance on the Authority's certifications, it is significant that Central Bank previously had been warned expressly that the Authority may have "given false or misleading certifications." I R. tab 12, ex. G at 455. As to Hasting's certification, the fact that Central Bank apparently prepared a draft of it, *see* II Supp. R. tab 75, and it was not executed until June 16 (the date of the bond closing), suggest that it was given little weight in Central Bank's decision to agree to delay the independent review.

Before the agreement to delay the independent review, it is undisputed that Central Bank knew that serious concerns had been raised about the accuracy of the Hastings updated appraisal. Central Bank's own action, in originally requiring an independent review, demonstrates that it believed that those concerns were credible. As a condition to postponing the independent review of the Hastings updated appraisal, Central Bank

did require that approximately $2 million worth of additional property be added to the security for the 1986 bond issue. This may have alleviated concerns about insufficient security for the 1986 bonds, but it did nothing to address the danger that the collateral was deficient for the 1988 bonds. Although the bank's duty at that time was only with respect to the 1986 bond issue, the bank was preparing to be the indenture trustee for the 1988 bond issue. Central Bank knew that the sale of the 1988 bonds was imminent, and apparently knew that the Hastings updated appraisal was being relied on to value the collateral for the 1988 bonds. Under these circumstances, the bank's knowledge of the alleged inadequacies of the Hastings updated appraisal could support a finding of extreme departure from the standards of ordinary care.

The above are all of the facts we can discern from the record before the court for summary judgment. Although a trial might shed more light on the reasons for Central Bank's actions, and that might justify the bank's exoneration, on the basis of the record before us we hold that plaintiffs have established a genuine issue of material fact as to the scienter element of aiding-and-abetting liability.[19]

The third element of substantial assistance was not addressed by the district court.[20] Plaintiffs argue that

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[19] In addition to arguing that Central Bank was reckless, plaintiffs argue alternatively that Central Bank had actual knowledge of the primary violation. Because of our disposition, we need not reach this issue.

[20] Central Bank argues that plaintiffs "absolutely ignored" the element of substantial assistance in the district court.

Central Bank's agreement to delay an independent review of the Hastings appraisal constituted substantial assistance to the primary violation. Central Bank argues that although it had the *right* to require an independent review it was not required to do so under the indenture. This simply establishes that Central Bank did not breach a duty under the indenture. On the separate question of whether Central Bank rendered substantial assistance to the primary violation, which allegedly included representing the Hastings appraisal as accurate, the trier of fact reasonably could conclude that had Central Bank adhered to its original demand for an independent review and not agreed to delay it, the depleted collateral would have been discovered and plaintiffs' losses avoided. Thus, we hold that plaintiffs have raised a genuine issue of material fact as to the element of substantial assistance, and the district court's grant of summary judgment for Central Bank was inappropriate.

REVERSED and REMANDED for proceedings consistent herewith.

Although plaintiffs' brief opposing summary judgment focused on the scienter element it cited the substantial assistance element and specifically referred to the agreement to delay the independent review of the appraisal. Any suggestion that plaintiffs failed to preserve the substantial assistance issue is without merit.

STETSON HILLS PUBLIC BUILDING AUTHORITY
ASSESSMENT LIEN BONDS
DEBT SERVICE SCHEDULE

DATED DATE: 12/01/86
DELIVERY DATE: 12/11/86

DATE	PRINCIPAL	RATE	INTEREST	TOTAL	FISCAL TOTAL
06/30/87			760,382.64	760,382.64	
12/30/87			654,875.00	654,875.00	1,415,257.64
06/30/88			654,875.00	654,875.00	
12/30/88	150,000.00	6.500	654,875.00	804,875.00	1,459,750.00
06/30/89			650,000.00	650,000.00	
12/30/89	200,000.00	6.750	650,000.00	850,000.00	1,500,000.00
06/30/90			643,250.00	643,250.00	
12/30/90	250,000.00	7.000	643,250.00	893,250.00	1,536,500.00
06/30/91			634,500.00	634,500.00	
12/30/91	300,000.00	7.200	634,500.00	934,500.00	1,569,000.00
06/30/92			623,700.00	623,700.00	
12/30/92	350,000.00	7.400	623,700.00	973,700.00	1,597,400.00
06/30/93			610,750.00	610,750.00	
12/30/93	400,000.00	7.600	610,750.00	1,010,750.00	1,621,500.00
06/30/94			595,550.00	595,550.00	
12/30/94	450,000.00	7.800	595,550.00	1,045,550.00	1,641,100.00
06/30/95			578,000.00	578,000.00	
12/30/95	500,000.00	8.000	578,000.00	1,078,000.00	1,656,000.00
06/30/96			558,000.00	558,000.00	
12/30/96			558,000.00	558,000.00	1,116,000.00
06/30/97			558,000.00	558,000.00	
12/30/97			558,000.00	558,000.00	1,116,000.00
06/30/98			558,000.00	558,000.00	
12/30/98			558,000.00	558,000.00	1,116,000.00
06/30/99			558,000.00	558,000.00	
12/30/99	1,505,000.00	9.000 *	558,000.00	2,063,000.00	2,621,000.00
06/30/00			490,275.00	490,275.00	
12/30/00	1,635,000.00	9.000 *	490,275.00	2,125,275.00	2,615,550.00
06/30/01			416,700.00	416,700.00	
12/30/01	1,790,000.00	9.000 *	416,700.00	2,206,700.00	2,623,400.00
06/30/02			336,150.00	336,150.00	
12/30/02	930,000.00	9.000 *	336,150.00	1,266,150.00	1,602,300.00
06/30/03			294,300.00	294,300.00	
12/30/03	2,030,000.00	9.000 *	294,300.00	2,324,300.00	2,618,600.00
06/30/04			202,950.00	202,950.00	
12/30/04	310,000.00	9.000 *	202,950.00	512,950.00	715,900.00
06/30/05			189,000.00	189,000.00	
12/30/05	1,075,000.00	9.000 *	189,000.00	1,264,000.00	1,453,000.00
06/30/06			140,625.00	140,625.00	
12/30/06	3,125,000.00	9.000	140,625.00	3,265,625.00	3,406,250.00
TOTAL	15,000,000.00		20,000,507.64	35,000,507.64	
ACCRUED			36,381.94	36,381.94	
NET COST	15,000,000.00		19,964,125.70	34,964,125.70	

AVERAGE COUPON 8.89700
TIC 9.35266 (FROM DELIVERY DATE)
BOND YEARS 224,808.33333 (FROM DATED DATE)
AVERAGE LIFE 14.95964
NIC 9.15469 (FROM DATED DATE)
DISCOUNT 580,000.00

* SINKING FUND

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SSUMPTION TABLE & SUMMARY OF SELECTED AMOUNTS

SSUMPTIONS

ISSUER NAME:	STETSON HILLS PUBLIC BUILDING AUTHORI
SAVEFILE NAME:	STET-88
INITIAL RES. (R-1-6000) ASSESSMENT:	$20,455.00
ASSESSMENT ESCALATION RATE:	9.2500%
BOND RESERVE FUND INTEREST RATE:	6.5000%
BOND PAR AMOUNT:	$15,000,000
ANNUAL TRUSTEE FEE:	$20,000
PROJECT SETTLEMENT DATE:	12/01/86
BOND DATED DATE:	12/01/86
FIRST BOND INTEREST DATE:	06/30/87
LAST BOND MATURITY DATE:	12/30/2006
YEAR END:	12/30
INTEREST PERIOD (in months):	6

ELECTED RESULTS

FINAL BOND FUND:	$15,000,000
SH PREPAYMENTS:	$0
SUPPLEMENTARY CONST FUND PROCEEDS:	($11,589,297)
BOND YIELD (True Int. Cost):	8.851519959%
NET INTEREST COST:	8.896693171%

	PERCENT OF PAR ISSUED	DOLLAR AMOUNT
ONSTRUCTION PROCEEDS:	85.7316%	$12,859,742
NDERWRITER DISCOUNT:	3.5000%	525,000
RIGINAL ISSUE DISCOUNT:	0.0000%	0
SERVE REQUIREMENT:	9.4351%	1,415,258
PITALIZED INTEREST:	0.0000%	0
ST OF ISSUANCE:	1.3333%	200,000
CRUED INTEREST:	0.0000%	0
TOTAL PAR ISSUED:	100.0000%	$15,000,000

epared by Dain Bosworth, Inc., on 11/21/86

(1)

Year	Non-Residential (P.I.P.) Acres Sold	Less: Acres Prepaid	Net Acres Sold	Assessment Rate	Assessment Due	Non-Residential (P.B.C.) Acres Sold	Less: Acres Prepaid	Net Acres Sold	Assessment Rate	Assessment Due	Total Non-Resid. Asmt. Due
12/01/86											
06/30/87	10.550	0.000	10.550	$74,865	$789,829	2.350	0.000	2.350	$122,116	$286,973	$1,076,802
12/30/87	10.550	0.000	10.550	74,865	789,829	2.350	0.000	2.350	122,116	286,973	1,076,802
06/30/88	7.200	0.000	7.200	81,790	588,890	1.600	0.000	1.600	133,412	213,459	802,350
12/30/88	7.200	0.000	7.200	81,790	588,890	1.600	0.000	1.600	133,412	213,459	802,350
06/30/89	4.800	0.000	4.800	89,356	428,909	1.050	0.000	1.050	145,753	153,040	581,949
12/30/89	4.800	0.000	4.800	89,356	428,909	1.050	0.000	1.050	145,753	153,040	581,949
06/30/90	3.450	0.000	3.450	97,621	336,794	0.750	0.000	0.750	159,235	119,426	456,220
12/30/90	3.450	0.000	3.450	97,621	336,794	0.750	0.000	0.750	159,235	119,426	456,220
06/30/91	1.500	0.000	1.500	106,651	159,977	0.350	0.000	0.350	173,964	60,887	220,864
12/30/91	1.500	0.000	1.500	106,651	159,977	0.350	0.000	0.350	173,964	60,887	220,864
06/30/92	3.490	0.000	3.490	116,517	406,643	1.700	0.000	1.700	190,056	323,095	729,738
12/30/92	3.490	0.000	3.490	116,517	406,643	1.700	0.000	1.700	190,056	323,095	729,738
06/30/93		0.000	0.000	127,294	0	2.450	0.000	2.450	207,636	508,708	508,708
12/30/93		0.000	0.000	127,294	0	2.450	0.000	2.450	207,636	508,708	508,708
06/30/94		0.000	0.000	139,069	0	3.000	0.000	3.000	226,842	680,527	680,527
12/30/94		0.000	0.000	139,069	0	3.000	0.000	3.000	226,842	680,527	680,527
06/30/95		0.000	0.000	151,933	0	2.100	0.000	2.100	247,825	520,433	520,433
12/30/95		0.000	0.000	151,933	0	2.100	0.000	2.100	247,825	520,433	520,433
06/30/96		0.000	0.000	165,987	0	1.100	0.000	1.100	270,749	297,824	297,824
12/30/96		0.000	0.000	165,987	0	1.100	0.000	1.100	270,749	297,824	297,824
06/30/97		0.000	0.000	181,341	0	0.500	0.000	0.500	295,793	147,897	147,897
12/30/97		0.000	0.000	181,341	0	0.500	0.000	0.500	295,793	147,897	147,897
06/30/98		0.000	0.000	198,115	0	2.000	0.000	2.000	323,154	646,308	646,308
12/30/98		0.000	0.000	198,115	0	2.000	0.000	2.000	323,154	646,308	646,308
06/30/99		0.000	0.000	216,440	0	2.500	0.000	2.500	353,046	882,615	882,615
12/30/99		0.000	0.000	216,440	0	2.500	0.000	2.500	353,046	882,615	882,615
06/30/2000		0.000	0.000	236,461	0	3.000	0.000	3.000	385,703	1,157,108	1,157,108
12/30/2000		0.000	0.000	236,461	0	3.000	0.000	3.000	385,703	1,157,108	1,157,108
06/30/2001		0.000	0.000	258,334	0	2.350	0.000	2.350	421,380	990,243	990,243
12/30/2001		0.000	0.000	258,334	0	2.350	0.000	2.350	421,380	990,243	990,243
06/30/2002		0.000	0.000	282,229	0	1.250	0.000	1.250	460,358	575,447	575,447
12/30/2002			0.000	282,229	0	1.250		1.250	460,358	575,447	575,447
06/30/2003			0.000	308,336	0	0.650		0.650	502,941	326,912	326,912
12/30/2003			0.000	308,336	0	0.650		0.650	502,941	326,912	326,912
06/30/2004			0.000	336,857	0	1.550		1.550	549,463	851,668	851,668
12/30/2004			0.000	336,857	0	1.550		1.550	549,463	851,668	851,668
06/30/2005			0.000	368,016	0	2.350		2.350	600,288	1,410,677	1,410,677
12/30/2005			0.000	368,016	0	2.350		2.350	600,288	1,410,677	1,410,677
06/30/2006			0.000	402,057	0	1.205		1.205	655,815	790,257	790,257
12/30/2006			0.000	402,057	0	1.205		1.205	655,815	790,257	790,257
	61.980	0.000	61.980		$5,422,083	67.610	0.000	67.610		$21,887,009	$27,309,092

Prepared by Data Bosworth, Inc., on 11/21/86

SIET 88 4

Year	Single-Family Residential (R-1-6000) Acres Sold	Less: Acres Prepaid	Net Acres Sold	Assessment Rate	Assessment Due	Multi-Family Residential (P.U.D.) Acres Sold	Less: Acres Prepaid	Net Acres Sold	Assessment Rate	Assessment Due	Total Resid. Asmt. Due	Total Assessment Due
12/01/86												
06/30/87	15.950	0.000	15.950	$20,455	$326,257	14.750	0.000	14.750	$29,660	$437,481	$763,739	$1,840,541
12/30/87	15.950	0.000	15.950	20,455	326,257	14.750	0.000	14.750	29,660	437,481	763,739	1,840,541
06/30/88	11.105	0.000	11.105	22,347	248,164	18.430	0.000	18.430	32,403	597,192	845,357	1,647,707
12/30/88	11.105	0.000	11.105	22,347	248,164	18.430	0.000	18.430	-32,403	597,192	845,357	1,647,707
06/30/89		0.000	0.000	24,414	0		0.000	0.000	35,401	0	0	581,949
12/30/89		0.000	0.000	24,414	0		0.000	0.000	35,401	0	0	581,949
06/30/90		0.000	0.000	26,673	0		0.000	0.000	38,675	0	0	456,220
12/30/90		0.000	0.000	26,673	0		0.000	0.000	38,675	0	0	456,220
06/30/91		0.000	0.000	29,140	0		0.000	0.000	42,253	0	0	220,864
12/30/91		0.000	0.000	29,140	0		0.000	0.000	42,253	0	0	220,864
06/30/92		0.000	0.000	31,835	0		0.000	0.000	46,161	0	0	729,738
12/30/92		0.000	0.000	31,835	0		0.000	0.000	46,161	0	0	729,738
06/30/93		0.000	0.000	34,780	0		0.000	0.000	50,431	0	0	508,708
12/30/93		0.000	0.000	34,780	0		0.000	0.000	50,431	0	0	508,708
06/30/94		0.000	0.000	37,997	0		0.000	0.000	55,096	0	0	680,527
12/30/94		0.000	0.000	37,997	0		0.000	0.000	55,096	0	0	680,527
06/30/95		0.000	0.000	41,512	0		0.000	0.000	60,192	0	0	520,433
12/30/95		0.000	0.000	41,512	0		0.000	0.000	60,192	0	0	520,433
06/30/96		0.000	0.000	45,352	0		0.000	0.000	65,760	0	0	297,824
12/30/96		0.000	0.000	45,352	0		0.000	0.000	65,760	0	0	297,824
06/30/97		0.000	0.000	49,547	0		0.000	0.000	71,843	0	0	147,897
12/30/97		0.000	0.000	49,547	0		0.000	0.000	71,843	0	0	147,897
06/30/98		0.000	0.000	54,130	0		0.000	0.000	78,488	0	0	646,308
12/30/98		0.000	0.000	54,130	0		0.000	0.000	78,488	0	0	646,308
06/30/99		0.000	0.000	59,137	0		0.000	0.000	85,748	0	0	882,615
12/30/99		0.000	0.000	59,137	0		0.000	0.000	85,748	0	0	882,615
06/30/2000		0.000	0.000	64,607	0		0.000	0.000	93,680	0	0	1,157,108
12/30/2000		0.000	0.000	64,607	0		0.000	0.000	93,680	0	0	1,157,108
06/30/2001		0.000	0.000	70,583	0		0.000	0.000	102,345	0	0	990,243
12/30/2001		0.000	0.000	70,583	0		0.000	0.000	102,345	0	0	990,243
06/30/2002		0.000	0.000	77,112	0		0.000	0.000	111,812	0	0	575,447
12/30/2002			0.000	77,112	0			0.000	111,812	0	0	575,447
06/30/2003			0.000	84,245	0			0.000	122,155	0	0	326,912
12/30/2003			0.000	84,245	0			0.000	122,155	0	0	326,912
06/30/2004			0.000	92,037	0			0.000	133,454	0	0	851,668
12/30/2004			0.000	92,037	0			0.000	133,454	0	0	851,668
06/30/2005			0.000	100,551	0			0.000	145,799	0	0	1,410,677
12/30/2005			0.000	100,551	0			0.000	145,799	0	0	1,410,677
06/30/2006			0.000	109,852	0			0.000	159,285	0	0	790,257
12/30/2006			0.000	109,852	0			0.000	159,285	0	0	790,257
	54.110	0.000	54.110		$1,148,843	66.360	0.000	66.360		$2,069,347	$3,218,191	$30,527,283

DCC460

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DEBT SERVICE SCHEDULE

Year	Principal	Coupon Rate	Interest	Payment Due	Fiscal Total	Bond Fund Balance	Reserve Requirement
12/01/86						$15,000,000	$1,415,258
06/30/87			$760,382.64	$760,382.64		15,000,000	1,415,258
12/30/87	0		654,875.00	654,875.00	1,415,257.64	15,000,000	1,459,750
06/30/88	0		654,875.00	654,875.00		15,000,000	1,459,750
12/30/88	150,000	6.500%	654,875.00	804,875.00	1,459,750.00	14,850,000	1,500,000
06/30/89	0		650,000.00	650,000.00		14,850,000	1,500,000
12/30/89	200,000	6.750%	650,000.00	850,000.00	1,500,000.00	14,650,000	1,536,500
06/30/90	0		643,250.00	643,250.00		14,650,000	1,536,500
12/30/90	250,000	7.000%	643,250.00	893,250.00	1,536,500.00	14,400,000	1,569,000
06/30/91	0		634,500.00	634,500.00		14,400,000	1,569,000
12/30/91	300,000	7.200%	634,500.00	934,500.00	1,569,000.00	14,100,000	1,597,400
06/30/92	0		623,700.00	623,700.00		14,100,000	1,597,400
12/30/92	350,000	7.400%	623,700.00	973,700.00	1,597,400.00	13,750,000	1,621,500
06/30/93	0		610,750.00	610,750.00		13,750,000	1,621,500
12/30/93	400,000	7.600%	610,750.00	1,010,750.00	1,621,500.00	13,350,000	1,641,100
06/30/94	0		595,550.00	595,550.00		13,350,000	1,641,100
12/30/94	450,000	7.800%	595,550.00	1,045,550.00	1,641,100.00	12,900,000	1,656,000
06/30/95	0		578,000.00	578,000.00		12,900,000	1,656,000
12/30/95	500,000	8.000%	578,000.00	1,078,000.00	1,656,000.00	12,400,000	1,116,000
06/30/96	0		558,000.00	558,000.00		12,400,000	1,116,000
12/30/96	0		558,000.00	558,000.00	1,116,000.00	12,400,000	1,116,000
06/30/97	0		558,000.00	558,000.00		12,400,000	1,116,000
12/30/97	0		558,000.00	558,000.00	1,116,000.00	12,400,000	1,116,000
06/30/98	0		558,000.00	558,000.00		12,400,000	1,116,000
12/30/98	0		558,000.00	558,000.00	1,116,000.00	12,400,000	2,621,000
06/30/99	0		558,000.00	558,000.00		12,400,000	2,621,000
12/30/99	1,505,000	9.000%	558,000.00	2,063,000.00	2,621,000.00	10,895,000	2,615,550
06/30/2000	0		490,275.00	490,275.00		10,895,000	2,615,550
12/30/2000	1,635,000	9.000%	490,275.00	2,125,275.00	2,615,550.00	9,260,000	2,623,400
06/30/2001	0		416,700.00	416,700.00		9,260,000	2,623,400
12/30/2001	1,790,000	9.000%	416,700.00	2,206,700.00	2,623,400.00	7,470,000	1,602,300
06/30/2002	0		336,150.00	336,150.00		7,470,000	1,602,300
12/30/2002	930,000	9.000%	336,150.00	1,266,150.00	1,602,300.00	6,540,000	2,618,600
06/30/2003	0		294,300.00	294,300.00		6,540,000	2,618,600
12/30/2003	2,030,000	9.000%	294,300.00	2,324,300.00	2,618,600.00	4,510,000	715,900
06/30/2004	0		202,950.00	202,950.00		4,510,000	715,900
12/30/2004	310,000	9.000%	202,950.00	512,950.00	715,900.00	4,200,000	1,453,000
06/30/2005	0		189,000.00	189,000.00		4,200,000	1,453,000
12/30/2005	1,075,000	9.000%	189,000.00	1,264,000.00	1,453,000.00	3,125,000	3,406,250
06/30/2006	0		140,625.00	140,625.00		3,125,000	3,406,250
12/30/2006	3,125,000	9.000%	140,625.00	3,265,625.00	3,406,250.00	0	0
	$15,000,000		$20,000,507.64	$35,000,507.64			

Prepared by Dain Bosworth, Inc., on 11/21/86

STETSON HILLS PUBLIC BUILDING AUTHORITY — Project Analysis (Collateral Only)

CASH FLOW

Year	Assessments Paid In	Paid Out Debt Service	Paid Out Expenses	Paid In From Issue	Funds From Restr. Suppl. Const. Fund	Prepaid Assmnts/SH	Interest Earned	Balance	Balance Less Res Req
2/01/86				$1,415,258	0	0		1,415,258	0
6/30/87	$1,840,541	($760,383)	$0		0	0	53,179	2,548,595	1,133,337
12/30/87	1,840,541	(654,875)	(20,000)		0	0	83,056	3,797,317	2,337,567
6/30/88	1,647,707	(654,875)	0		0	0	123,751	4,913,899	3,454,149
12/30/88	1,647,707	(804,875)	(20,000)		0	0	160,139	5,896,870	4,396,870
6/30/89	581,949	(650,000)	0		(68,051)	0	191,123	6,019,942	4,519,942
12/30/89	581,949	(850,000)	(20,000)		(288,051)	0	196,184	5,928,075	4,391,575
6/30/90	456,220	(643,250)	0		(187,030)	0	192,135	5,933,180	4,396,680
12/30/90	456,220	(893,250)	(20,000)		(457,030)	0	193,357	5,669,507	4,100,507
6/30/91	220,864	(634,500)	0		(413,636)	0	183,754	5,439,625	3,870,625
12/30/91	220,864	(934,500)	(20,000)		(733,636)	0	177,272	4,883,262	3,285,862
6/30/92	729,738	(623,700)	0		0	0	159,141	5,148,440	3,551,040
12/30/92	729,738	(973,700)	(20,000)		(263,962)	0	167,783	5,052,261	3,430,761
6/30/93	508,708	(610,750)	0		(102,042)	0	163,749	5,113,967	3,492,467
12/30/93	508,708	(1,010,750)	(20,000)		(522,042)	0	166,659	4,758,585	3,117,485
6/30/94	680,527	(595,550)	0		0	0	154,230	4,997,792	3,356,692
12/30/94	680,527	(1,045,550)	(20,000)		(385,023)	0	162,873	4,775,642	3,119,642
6/30/95	520,433	(578,000)	0		(57,567)	0	154,783	4,872,858	3,216,858
12/30/95	520,433	(1,078,000)	(20,000)		(577,567)	0	158,802	4,454,092	3,338,092
6/30/96	297,824	(558,000)	0		(260,176)	0	145,155	4,339,071	3,223,071
12/30/96	297,824	(558,000)	(20,000)		(280,176)	0	141,406	4,200,301	3,084,301
6/30/97	147,897	(558,000)	0		(410,103)	0	136,136	3,926,333	2,810,333
12/30/97	147,897	(558,000)	(20,000)		(430,103)	0	127,955	3,624,185	2,508,185
6/30/98	646,308	(558,000)	0		0	0	117,463	3,829,957	2,713,957
12/30/98	646,308	(558,000)	(20,000)		0	0	124,815	4,023,080	1,402,080
6/30/99	882,615	(558,000)	0		0	0	130,392	4,478,086	1,857,086
12/30/99	882,615	(2,063,000)	(20,000)		(1,200,385)	0	145,937	3,423,637	808,087
6/30/2000	1,157,108	(490,275)	0		0	0	111,573	4,202,043	1,586,493
12/30/2000	1,157,108	(2,125,275)	(20,000)		(988,167)	0	136,941	3,350,817	727,417
6/30/2001	990,243	(416,700)	0		0	0	108,603	4,032,963	1,409,563
12/30/2001	990,243	(2,206,700)	(20,000)		(1,236,457)	0	131,430	2,927,937	1,325,637
6/30/2002	575,447	(336,150)	0		0	0	94,897	3,262,132	1,659,832
12/30/2002	575,447	(1,266,150)	(20,000)		(710,703)	0	106,310	2,657,739	39,139
6/30/2003	326,912	(294,300)	0		0	0	86,140	2,776,490	157,890
12/30/2003	326,912	(2,324,300)	(20,000)		(2,017,388)	0	90,483	849,585	133,685
6/30/2004	851,668	(202,950)	- 0		0	0	27,687	1,525,989	810,089
12/30/2004	851,668	(512,950)	(20,000)		0	0	49,731	1,894,437	441,437
6/30/2005	1,410,677	(189,000)	0		0	0	61,401	3,177,515	1,724,515
12/30/2005	1,410,677	(1,264,000)	(20,000)		0	0	103,552	3,407,745	1,495
6/30/2006	790,257	(140,625)	0		0	0	110,448	4,167,825	761,575
12/30/2006	790,257	(3,265,625)	(20,000)		0	0	135,825	1,808,283	1,808,283
	$30,527,283	($35,000,508)	($400,000)	$1,415,258	($11,589,297)	$0			

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	/ Single-Family Residen.(R-1-6000) //			Multi-Family Residential (P.U.D.)/			Total
	Net Acreage			Acreage			Res. Asmts.
Year	Left	Assessment	Total	Left	Assessment	Total	Due
/01/86	54.110			66.360			
6/30/87	38.160	$20,455	$780,563	51.610	$29,660	$1,530,740	$2,311,302
2/30/87	22.210	20,455	454,306	36.860	29,660	1,093,258	1,547,564
6/30/88	11.105	22,347	248,166	18.430	32,403	597,192	845,357
2/30/88	0.000	22,347	0	0.000	32,403	0	0
6/30/89	0.000	24,414	0	0.000	35,401	0	0
2/30/89	0.000	24,414	0	0.000	35,401	0	0
6/30/90	0.000	26,673	0	0.000	38,675	0	0
2/30/90	0.000	26,673	0	0.000	38,675	0	0
6/30/91	0.000	29,140	0	0.000	42,253	0	0
2/30/91	0.000	29,140	0	0.000	42,253	0	0
6/30/92	0.000	31,835	0	0.000	46,161	0	0
2/30/92	0.000	31,835	0	0.000	46,161	0	0
6/30/93	0.000	34,780	0	0.000	50,431	0	0
2/30/93	0.000	34,780	0	0.000	50,431	0	0
6/30/94	0.000	37,997	0	0.000	55,096	0	0
2/30/94	0.000	37,997	0	0.000	55,096	0	0
6/30/95	0.000	41,512	0	0.000	60,192	0	0
2/30/95	0.000	41,512	0	0.000	60,192	0	0
6/30/96	0.000	45,352	0	0.000	65,760	0	0
2/30/96	0.000	45,852	0	0.000	65,760	0	0
6/30/97	0.000	49,547	0	0.000	71,843	0	0
2/30/97	0.000	49,547	0	0.000	71,843	0	0
6/30/98	0.000	54,130	0	0.000	78,488	0	0
2/30/98	0.000	54,130	0	0.000	78,488	0	0
6/30/99	0.000	59,137	0	0.000	85,748	0	0
2/30/99	0.000	59,137	0	0.000	85,748	0	0
30/2000	0.000	64,607	0	0.000	93,680	0	0
30/2000	0.000	64,607	0	0.000	93,680	0	0
30/2001	0.000	70,583	0	0.000	102,345	0	0
30/2001	0.000	70,583	0	0.000	102,345	0	0
30/2002	0.000	77,112	0	0.000	111,812	0	0
30/2002	0.000	77,112	0	0.000	111,812	0	0
/2003	0.000	84,245	0	0.000	122,155	0	0
0/2003	0.000	84,245	0	0.000	122,155	0	0
0/2004	0.000	92,037	0	0.000	133,454	0	0
30/2004	0.000	92,037	0	0.000	133,454	0	0
30/2005	0.000	100,551	0	0.000	145,799	0	0
30/2005	0.000	100,551	0	0.000	145,799	0	0
30/2006	0.000	109,852	0	0.000	159,285	0	0
30/2006	0.000	109,852	0	0.000	159,285	0	0

	/---- Non-Residential (P.I.P) ----//			/---- Non-Residential (P.B.C.) ----/			Total Non-
	Net Acreage		Total	Net Acreage		Total	Res. Asmts.
ear	Left	Assessment	Due	Left	Assessment	Due	Due
?/01/86	61.980			67.610			
6/30/87	51.430	$74,865	$3,850,322	65.260	$122,116	$7,969,313	$11,819,635
12/30/87	40.880	74,865	3,060,493	62.910	122,116	7,682,340	10,742,833
06/30/88	33.680	81,790	2,754,699	61.310	133,412	8,179,497	10,934,195
12/30/88	26.480	81,790	2,165,808	59.710	133,412	7,966,037	10,131,845
06/30/89	21.680	89,356	1,937,237	58.660	145,753	8,549,855	10,487,092
12/30/89	16.880	89,356	1,508,328	57.610	145,753	8,396,815	9,905,143
06/30/90	13.430	97,621	1,311,055	56.860	159,235	9,054,094	10,365,149
12/30/90	9.980	97,621	974,261	56.110	159,235	8,934,668	9,908,929
06/30/91	8.480	106,651	904,403	55.760	173,964	9,700,237	10,604,641
12/30/91	6.980	106,651	744,426	55.410	173,964	9,639,350	10,383,776
06/30/92	3.490	116,517	406,643	53.710	190,056	10,207,895	10,614,538
12/30/92	0.000	116,517	0	52.010	190,056	9,884,800	9,884,800
06/30/93	0.000	127,294	0	49.560	207,636	10,290,436	10,290,436
12/30/93	0.000	127,294	0	47.110	207,636	9,781,728	9,781,728
06/30/94	0.000	139,069	0	44.110	226,842	10,006,011	10,006,011
12/30/94	0.000	139,069	0	41.110	226,842	9,325,485	9,325,485
06/30/95	0.000	151,933	0	39.010	247,825	9,667,659	9,667,659
12/30/95	0.000	151,933	0	36.910	247,825	9,147,226	9,147,226
06/30/96	0.000	165,987	0	35.810	270,749	9,695,521	9,695,521
12/30/96	0.000	165,987	0	34.710	270,749	9,397,697	9,397,697
06/30/97	0.000	181,341	0	34.210	295,793	10,119,087	10,119,087
12/30/97	0.000	181,341	0	33.710	295,793	9,971,191	9,971,191
06/30/98	0.000	198,115	0	31.710	323,154	10,247,218	10,247,218
12/30/98	0.000	198,115	0	29.710	323,154	9,600,909	9,600,909
06/30/99	0.000	216,440	0	27.210	353,046	9,606,379	9,606,379
12/30/99	0.000	216,440	0	24.710	353,046	8,723,764	8,723,764
/30/2000	0.000	236,461	0	21.710	385,703	8,373,604	8,373,604
/30/2000	0.000	236,461	0	18.710	385,703	7,216,496	7,216,496
/30/2001	0.000	258,334	0	16.360	421,380	6,893,779	6,893,779
/30/2001	0.000	258,334	0	14.010	421,380	5,903,536	5,903,536
/30/2002	0.000	282,229	0	12.760	460,358	5,874,165	5,874,165
/30/2002	0.000	282,229	0	11.510	460,358	5,298,718	5,298,718
1/2003	0.000	308,336	0	10.860	502,941	5,461,938	5,461,938
30/2003	0.000	308,336	0	10.210	502,941	5,135,026	5,135,026
30/2004	0.000	336,857	0	8.660	549,463	4,758,349	4,758,349
30/2004	0.000	336,857	0	7.110	549,463	3,906,681	3,906,681
/30/2005	0.000	368,016	0	4.760	600,288	2,857,372	2,857,372
/30/2005	0.000	368,016	0	2.410	600,288	1,446,695	1,446,695
/30/2006	0.000	402,057	0	1.205	655,815	790,257	790,257
/30/2006	0.000	402,057	0	0.000	655,815	0	0

STETSON HILLS PUBLIC BUILDING AUTHORITY — Project Analysis (Collateral Only)

Year	Total Res. Assmts. Due	Total Non-Res. Assmts. Due	Supp. Const. Fund Replacement Acres	Total Due	O/S Assmts Due (Numerator)	Outstanding Bonds	Required Amount from Bond Fund	Less: Reserve Fund, Suppl.Const. Fd.& Bond Fd.	Total Requirements (Denominator)	110% Test
12/01/86										
06/30/87	$2,311,302	$11,819,635	0.000	$0	$14,130,938	$15,000,000	738,435	2,153,693	$12,846,307	110.00%
12/30/87	1,547,564	10,742,833	1.592	32,554	12,322,951	15,000,000	2,337,567	3,797,317	11,202,683	110.00%
06/30/88	845,357	10,934,195	1.592	35,566	11,815,118	15,000,000	2,799,234	4,258,984	10,741,016	110.00%
12/30/88	0	10,131,845	1.592	35,566	10,167,411	14,850,000	4,106,899	5,606,899	9,243,101	110.00%
06/30/89	0	10,487,092	1.592	38,856	10,525,948	14,850,000	3,780,957	5,280,957	9,569,043	110.00%
12/30/89	0	9,905,143	1.592	38,856	9,943,999	14,650,000	4,073,501	5,610,001	9,039,999	110.00%
06/30/90	0	10,365,149	1.592	42,450	10,407,599	14,650,000	3,652,046	5,188,546	9,461,454	110.00%
12/30/90	0	9,908,929	1.592	42,450	9,951,379	14,400,000	3,784,292	5,353,292	9,046,708	110.00%
06/30/91	0	10,604,641	1.592	46,376	10,651,017	14,400,000	3,148,257	4,717,257	9,682,743	110.00%
12/30/91	0	10,383,776	1.592	46,376	10,430,153	14,100,000	3,020,643	4,618,043	9,481,957	110.00%
06/30/92	0	10,614,538	1.592	50,666	10,665,204	14,100,000	2,806,960	4,404,360	9,695,640	110.00%
12/30/92	0	9,884,800	1.592	50,666	9,935,466	13,750,000	3,096,258	4,717,758	9,032,242	110.00%
06/30/93	0	10,290,436	1.592	55,353	10,345,789	13,750,000	2,723,237	4,344,737	9,405,263	110.00%
12/30/93	0	9,781,728	1.592	55,353	9,837,081	13,350,000	2,766,099	4,407,199	8,942,801	110.00%
06/30/94	0	10,006,011	1.592	60,473	10,066,484	13,350,000	2,557,551	4,198,651	9,151,349	110.00%
12/30/94	0	9,325,485	1.592	60,473	9,385,958	12,900,000	2,711,311	4,367,311	8,532,689	110.00%
06/30/95	0	9,667,639	1.592	66,067	9,733,726	12,900,000	2,395,158	4,051,158	8,848,842	110.00%
12/30/95	0	9,147,226	1.592	66,067	9,213,293	12,400,000	2,908,279	4,024,279	8,375,721	110.00%
06/30/96	0	9,695,521	1.592	72,178	9,767,699	12,400,000	2,404,274	3,520,274	8,879,726	110.00%
12/30/96	0	9,397,697	1.592	72,178	9,469,875	12,400,000	2,675,023	3,791,023	8,608,977	110.00%
06/30/97	0	10,119,087	1.592	78,854	10,197,942	12,400,000	2,013,144	3,129,144	9,270,856	110.00%
12/30/97	0	9,971,191	1.592	78,854	10,050,045	12,400,000	2,147,595	3,263,595	9,136,405	110.00%
06/30/98	0	10,247,218	1.592	86,148	10,333,366	12,400,000	1,890,031	3,006,031	9,393,969	110.00%
12/30/98	0	9,600,909	1.592	86,148	9,687,058	12,400,000	972,584	3,593,584	8,806,416	110.00%
06/30/99	0	9,606,379	1.592	94,117	9,700,496	12,400,000	960,367	3,581,367	8,818,633	110.00%
12/30/99	0	8,723,764	1.592	94,117	8,817,881	10,895,000	263,195	2,878,745	8,016,255	110.00%
6/30/2000	0	8,373,604	1.592	102,823	8,476,427	10,895,000	573,607	3,189,157	7,705,843	110.00%
2/30/2000	0	7,216,496	1.592	102,823	7,319,319	9,260,000	0	2,623,400	6,636,600	110.29%
6/30/2001	0	6,893,779	1.592	112,334	7,006,113	9,260,000	267,406	2,890,806	6,369,194	110.00%
2/30/2001	0	5,903,536	1.592	112,334	6,015,870	7,470,000	398,728	2,001,028	5,468,972	110.00%
6/30/2002	0	5,874,165	1.592	122,725	5,996,890	7,470,000	415,982	2,018,282	5,451,718	110.00%
'30/2002	0	5,298,718	1.592	122,725	5,421,443	6,540,000	0	2,618,600	3,921,400	138.25%
30/2003	0	5,461,938	1.592	134,077	5,596,015	6,540,000	0	2,618,600	3,921,400	142.70%
'30/2003	0	5,135,026	1.592	134,077	5,269,103	4,510,000	0	715,900	3,794,100	138.88%
/30/2004	0	4,758,349	1.592	146,479	4,904,828	4,510,000	0	715,900	3,794,100	129.28%
2/30/2004	0	3,906,681	1.592	146,479	4,053,160	4,200,000	0	1,453,000	2,747,000	147.55%
6/30/2005	0	2,857,372	1.592	160,028	3,017,400	4,200,000	3,909	1,456,909	2,743,091	110.00%
2/30/2005	0	1,446,695	1.592	160,028	1,606,723	3,125,000	0	3,125,000	0	0.00%
6/30/2006	0	790,257	1.592	174,831	965,088	3,125,000	0	3,125,000	0	0.00%
12/30/2006	0	0	1.592	174,831	174,831	0	0	0	0	0.00%

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